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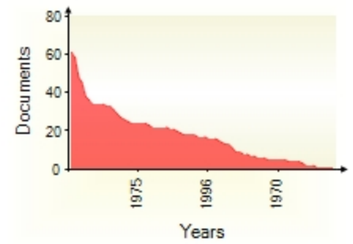
Timeline



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Court
SUPREME COURT OF BANGLADESH (APPELLATE DIVISION) (303)

Year
2022 (21)
2021 (18)

Act Rule Order
Code of Civil Procedure 1908 (CPC) - Order IX Rule 13 (22)

Subject
Administrative Law (46)
Administrative law (1)

Judge
A.B.M. Khairul Haque (23)
A.F.M. Abdur Rahman (13)

Keywords
Absence (510)
Accused (413)

Display in Results : Excerpt CaseNote

1. 63 Moons Technologies Ltd. and Ors. vs. Union of India (UOI) and Ors. (30.04.2019 - SC) Add to session list

IN THE SUPREME COURT OF INDIA Hon'ble Judges/Coram: Rohinton Fali Nariman and Vineet Saran, JJ Counsels: For Appearing Parties: Tushar Mehta, SG, Pinky Anand, ASG, Mukul

CaseNote: Company - Amalgamation order - Challenge thereto -Articles 19, 14 and Article 31A of Constitution of India, 1950 and Section 396 of Companies Act, 1956 - Present batch of appeals and writ petition raised questions as to applicability and construction of Section 396 of Act, 1956, which dealt with compulsory amalgamation of companies by a Central Government order, when this became essential in public interest - Whether final amalgamation order was ultra vires Section 396 of the Companies Act, and violative of Article 14 of Constitution of India.

Facts:

The Appellant, 63 Moons Technologies Ltd. (FTIL, which name was changed to 63 Moons Technologies Ltd.), is a 99.99% shareholder of the National Spot Exchange Ltd. (NSEL), and is a listed company. About 45% of the shareholding of FTIL is held by Shri Jignesh Shah and family, and about 43% of the shareholding is held by members of the Indian public. Approximately 5% of the shareholding is held by institutional investors. FTIL is a profitable company, having a positive net worth of over INR 2500 crore, and is in the business of providing software which is used for trading by brokers and exchanges across the country. FTIL has about 900 employees, and a Board of Directors which is different from the Board of Directors of its wholly owned subsidiary, i.e., NSEL. On the other hand, NSEL was incorporated in 2005 by Multi Commodities Exchanges [MCX] and its nominees. Ministry of Finance, Government of India, issued a notification withdrawing the exemption granted to NSEL. Exemptions granted to the National Commodity and Derivatives Exchange Ltd. (NCDEX) Spot Exchange and the National Agricultural Produce Market Committee (APMC) were also withdrawn. Additional Secretary, Department of Economic Affairs, wrote a letter to the Ministry of Corporate Affairs stating that FTIL and NSEL appear to be maintaining separate identities for a fraudulent purpose, i.e., to deprive investors of their money. As a result, there is a need to lift the corporate veil in order to unearth the fraud, as a result of which, amalgamation of two companies, where one has defrauded market participants and the other company is cash-rich and capable of addressing the payment crisis more effectively. It was therefore proposed to merge FTIL and NSEL under Section 396 of the Companies Act. On 21st October, 2014, a draft order of amalgamation, made in accordance with Section 396(3) of the Companies Act, was circulated to the relevant stakeholders. As a result, FTIL filed Writ Petition. Bombay High Court directed the parties to maintain status quo. Union of India filed an affidavit in reply, categorically confirming that the impugned draft order has been made by the Central Government on the basis of the FMC's proposal dated 18.08.2014. Bombay High Court vacated the status quo order, and passed an order allowing FTIL, NSEL, and their shareholders to file their objections to the draft amalgamation order. Meanwhile, Under Section 396(3), a compensation order was made, which involved compensation only to a particular shareholder of NSEL. Central Government issued a notification to merge the functions of the FMC with the Securities and Exchange Board of India [SEBI]. On the same day, the FCRA was also repealed. Thus, SEBI was now vested with the powers of the FMC which is to be governed by the Securities and Exchange Board of India Act, 1992 [SEBI Act]. Final amalgamation order was passed in terms of Section 396(3), thereby merging FTIL and NSEL, wherein all assets and liabilities of NSEL would become assets and liabilities of FTIL.

Held, while allowing the appeal

1. Section 396 cannot be challenged on the ground of Article 14 or Article 19, given Article 31A of the Constitution of India. However, this does not mean that, Section 396 must be construed in such a fashion that, it would lead to arbitrary or unreasonable results. [23]

2. In the context of compulsory amalgamation of two or more companies, the expression "public interest" would mean the welfare of the public or the interest of society as a whole, as contrasted with the "selfish" interest of a group of private individuals. "Public interest" would mean the combining of resources of two or more companies so as to impact production and consumption of goods and services and employment of persons relatable thereto for the general benefit of the community. Conversely, any action that impedes promotion of industry or obstructs growth which is in national or public interest would run counter to public interest. [54]

3. Neither FTIL nor NSEL has denied the fact that paired contracts in commodities were going on, and by April to July, 2013, 99% (and excluding E-series contracts), at least 46% of the turnover of NSEL was made up of such paired contracts. There is no doubt that, such paired contracts were, in fact, financing transactions which were distinct from sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA. NSEL throughout kept representing that it was, in fact, a commodity exchange dealing with spot deliveries. Apart from the Grant Thornton report and the FMC order, Shri Jignesh Shah, on 10.07.2013, made representations to the DCA and the FMC, in which he stated that, NSEL had full stock as collateral; 10-20% of open position as margin money; and that the stock currently held in NSEL's 120 warehouses was valued at INR 6000 crore, all of which turned out to be incorrect. Further, there is no doubt whatsoever that in

July, 2013, as a result of NSEL stopping trading on its exchange, a payment crisis of approximately INR 5600 crore arose. [55.3]

4. When it comes to whether the Central Government's satisfaction as to whether it was "essential" to amalgamate companies, it must be borne in mind is that, NSEL had itself offered a settlement scheme to pay back the persons who have allegedly been duped. It was found that this scheme could not really take off, as a result of which, large amounts continued to be owed to such persons. That this was the real concern of the FMC is clear from a letter dated 18th August, 2014 addressed by the FMC to the Secretary, Ministry of Corporate Affairs. This letter would show that the immediate reason for amalgamation, according to the FMC, and which was faithfully carried out by Government, is that NSEL, as a corporate entity, seems financially and physically incapable of effecting any substantial recovery from defaulting members. This was the "emergency situation" according to the FMC, which should lead to an order of amalgamation of the holding and subsidiary companies so that the holding company's financial resources could be used to pursue proceedings by which monies owed to the alleged duped investors/traders could be recovered. [56]

5. What concerned the FMC in August 2014 has, by the date of the final amalgamation order, been largely redressed without amalgamation. The "emergency situation" of 2013 which, even according to the Central Government, required the emergent step of compulsory amalgamation has, by the time of the passing of the Central Government order, disappeared. What was emergent, and therefore, essential, even according to the FMC and the Government in 2013-2014, has been largely redressed in 2016, by the time the amalgamation order was made. Also, the Central Government order does not apply its mind to the essentiality aspect of Section 396 at all. In fact, in several places, it refers to "essential public interest" as if "essential" goes with "public interest" instead of being a separate and distinct condition precedent to the exercise of power Under Section 396. On facts, therefore, it is clear that the essentiality test, which is the condition precedent to the applicable to Section 396, cannot be said to have been satisfied. [56.2]

6. All the expressions used in relation to "public interest" have relation only to the businesses of the two companies that are sought to be amalgamated. There is no interest of the general public as opposed to the businesses of the two companies that are referred to. Leveraging of combined assets, capital, and reserves is only to settle liabilities of certain stakeholders and creditors when the order is read as a whole, and given the fact that the businesses of the two companies were completely different. So far as achieving economy of scale and efficient administration is concerned, it is difficult to see how this would apply to the fact situation in present case where NSEL is admittedly a company which has stopped functioning as a commodities exchange at least with effect from July, 2013 with no hope of any revival. Thus, the consolidation of businesses spoken about does not exist as a matter of fact, as NSEL's business has come to a grinding halt, as has been observed by the FMC and the Central Government itself. [59]

7. Recommendations are in the form of a letter dated 18.08.2014, in which the "business reality" is the fact that dues of INR 5600 crore have to be paid, and that NSEL does not have the wherewithal to do so. Thus, its parent company's financial resources ought to be used to effect such payment. This "business reality", therefore, speaks only of the private interest of the investors/traders who have been allegedly duped (which fact will only be established in suits filed by them in 2014), and nothing beyond (which would show some vestige of public interest). There is no "adjudication" on the "fraud" in the facts of the present case, and thus, not an exercise of lifting of the corporate veil of the pre-amalgamation companies. The amalgamation order contradicts itself by then stating that NSEL is the alter ego of FTIL, and thus, the two companies are practically one entity. In any event, these paragraphs do not indicate as to how the 'alter ego' argument impacts public interest. [59.3]

8. Under Section 396(4)(b), the Central Government may, after considering suggestions and objections from the stakeholders mentioned, make modifications in the draft order as may seem to it desirable. No modification has been made in the body of the Central Government order as finally made. If the Central Government had actually considered that each of these three reasons impact public interest, it would have explicitly said so after suggestions and objections were made by the various stakeholders. The fact that the Central Government has not amended the body of the final order is of great significance - it is only the original reasons given in the draft order that continue as such in the final order which, are not in furtherance of public interest at all. [59.4]

9. "Restoring/safeguarding public confidence in forward contracts and exchanges, which are an integral and essential part of the Indian economy and financial system, by consolidating the businesses of NSEL and FTIL," is not contained in the answer given to objections in the order. First and foremost, restoring public confidence is no part of the order. Similarly, when it comes to reason (b), "giving effect to business realities of the case" contained in the answer to objections does not contain "by consolidating the businesses of FTIL and NSEL", nor does it contain "and preventing FTIL from distancing itself from NSEL, which is, even otherwise, its alter ego". On the contrary, the High Court itself mentions, that "this is also not a case where the Central Government has, in fact, lifted the corporate veil, despite the alleged non-existence of the circumstances justifying lifting of such corporate veil", and further, "this is not a case where the Central Government has lifted the corporate veil and sought to apportion any liability upon either NSEL or FTIL". No reasonable body of persons properly instructed in law could possibly arrive at the conclusion that the impugned order has been made in public interest. [59.5]

10. It is the Central Government that has to be "satisfied" that its order is in public interest and such "satisfaction" must, therefore, be of the Central Government itself and must, therefore, appear from the order itself. [63]

11. Section 396(3) speaks of a shareholder's or a creditor's interest in or rights against the company resulting from an amalgamation order. Such "interest in" or "rights against" refers to real and substantive rights, as opposed to rights that are only in form. A shareholder or creditor gets effected by an amalgamation order, if the value of his share gets depleted as a result of the amalgamation and if dividends that have been paid to him are likely to come down as a result of the amalgamation. Likewise, a creditor of a solvent company is directly effected by an amalgamation by which the amount loaned by such creditor becomes, as a result of the amalgamation, less likely to be paid back in time, than if the amalgamation did not take place. Such rights and interests of members and creditors are substantive rights which, when effected by the amalgamation, lead to compensation having to be paid. Every shareholder of a company and indeed, every creditor of a company, is concerned only with the "economic value" of his share or the loan granted to a company, as the case may be. The moment the share value, in real terms, is likely to dip, and/or loans granted are likely not to be repaid in time or at all as a result of an amalgamation, such members or creditors of the amalgamating company are equally entitled to be compensated for this economic loss as are the members and creditors of the amalgamated company, depending on the facts of each case. A reasonable construction must be given to Section 396. [65]

12. Thus, it is clear from a reading of Section 396(3), (3A), and (4) (aa) that, every member or creditor of each of the companies before amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting

from the amalgamation as he had in the original company. To the extent to which the interest or rights of such member or creditor are less than his interest or rights against the original company, post amalgamation, he shall be entitled to compensation which is to be assessed. Post assessment, if such member or creditor is aggrieved, he may prefer an appeal to the appellate authority under Sub-section (3A). Under Sub-section (4)(aa), no order of amalgamation can be made unless the time for preferring an appeal under Sub-section (3A) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of. [66]

13. Fact that, the assessment order dated 1st April, 2015 did not provide any compensation to either the shareholders or creditors of FTIL for the economic loss caused by the amalgamation in breach of Section 396(3), it is clear that an important condition precedent to the passing of the final amalgamation order was not met. On this ground also, therefore, the final amalgamation order has to be held to be ultra vires Section 396 of the Companies Act, and, being arbitrary and unreasonable, violative of Article 14 of the Constitution of India. [74]

14. The order dated 12th February, 2016 is ultra vires Section 396 of the Companies Act, and violative of Article 14 of the Constitution. Appeals allowed. [76]

Cited in DB

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2. A. Hakim Gazi and Ors. vs. Md. Nasiruddin and Ors. (11.12.2014 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION FMA No. 114 of 2013/FMAT No. 614 of 2012 and Civil Rule No. 647 (FM)/2012 Hon'ble Judges/Coram: A.K.M. Abdul Hakim and

CaseNote: Banking - Ad-Interim Injunction - Vacation of Order - Whether impugned order by which ad-interim order of injunction passed on relevant date has been vacated is sustainable? - Held, in instant case, whether loan taken has been merged in renewed and enhanced loan, guarantee given by plaintiff in begging is a continuing guarantee and thus under Section 12of Act bank had legal right to sell mortgaged property as attorney of plaintiff under power of attorney which was executed against loan taken in relevant year are to be determined by trial Court upon taking evidence and scrutinizing terms of relevant documents and transactions entered into between parties - Instant case relates to an interlocutory matter of injunction - Therefore, this court is not in a position to determine issue without taking evidence - However, considering facts and circumstances discussed above, this court find a prima facie arguable case in favour of plaintiff/appellants on this point - So far as other principles governing law of injunction i.e., balance of convenience and inconvenience and irreparable loss are concerned, this court note that plaintiff received sale proceeds of auction sale from bank - It is case of bank that according to provisions of Section 12 of Act, it took over possession of property on relevant date and handed over same to auction purchaser, which is evident from relevant memo signed by Executive Magistrate and Surveyor, Revenue Section, both of office of Deputy Commissioner, but same has been denied by appellants and their case is that said memo is a paper transaction and was not acted upon - Appellants are still in possession of suit property - In supplementary affidavit filed on behalf of defendant No. 2 auctioneer purchaser, it has been stated that auction purchaser has been possessing suit land and constructed a boundary wall surrounding same - However, they did not file any document supporting claim as to possession - So, this court find a prima facie case in favour of plaintiff/appellants in respect of possession of suit property - Since this have already found a prima facie arguable case in favour of plaintiff, it is considered view of this that justice would be served by passing an order of status quo in respect of possession and position of suit property in question - In view of facts, circumstances and laws discussed above, parties are directed to maintain status quo in respect of (Ka) scheduled property as described in plaint till disposal of Title Suit now pending in Court of trial court - With above observations and direction instant Appeal is disposed of - Connected Civil Rule is accordingly disposed of - Finding of facts made in this judgment will not be binding upon court below - Trial court will come to its own finding, both on facts and law, upon evidences adduced by parties. [34],[35],[36], [37],[38]

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3. A. Latif and Company Limited vs. The Project Director, P.L.-480 and Ors. (28.08.2003 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION First Miscellaneous Appeal No. 71 of 2001 Hon'ble Judges/Coram: A.K. Badrul Huq and Md E. Appellant made start of work and

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4. A. Latif and Company Limited vs. The Project Director, P.L.-480, title-3, LGED, LGED Bhaban and Ors. (23.08.2003 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION First Miscellaneous Appeal No. 71 of 2001 Hon'ble Judges/Coram: A.K. Badrul Huq and Md E. Appellant made start of work and

CaseNote: Arbitration - Validity of award - Appeal filed against order setting aside arbitral award - Whether Arbitrator passed just and reasonable award - Held,Court could not sit on appeal upon conclusion of Arbitrator by re-examining evidences examined by Arbitrator - No allegation had been mounted against Arbitrator that award had been obtained by collusion or inconsequence of a bribe - Reasonableness of reasons assigned by Arbitrator could not be challenged - Arbitrator was sole judge of quality as well as quantity of evidence - Award amount as damage for loss of good will and reputation of business did neither appear to be proper nor have any legal foundation - Award amount in respect of arrear contract money and interest at rate of 16% simple interest on award amount as compensatory cost transpires to be proper and legal - Appeal allowed in part. [48], [80],[82], [84]

5. A.B.M. Kamrul Ahsan vs. Bangladesh Bank and Ors. (13.12.2011 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 3391 of 2011 Appellants: A.B.M. Kamrul Ahsan Vs. Respondent: Bangladesh Bank and Ors

CaseNote: Banking - Recovery of loan - Auction - Validity of - Writ Petition filed impugning auction sale of vessel for recovery of loan - Whether auction sale of vessel was made without any lawful authority - Held, Respondent Bank was a private banking company not created under any statute and not a statutory body or local authority - Petitioner has brought specific allegations against process of holding auction and material irregularity and fraud against Respondent Bank - Petitioner was to take recourse to ventilate his grievance to any other competent Court - Writ Petition was not maintainable - Rule discharged. [18], [20],[21]

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6. A.B.M. Shamsul Alam and another vs. The State (12.06.1991 - BDHC) Add to session list

Niamat Ali Sheikh and others v. Begum Eneyetur Noor and others, 42 **DLR** (AD) 250 23.11.79, was indicated in Special Case No. **74** of 1982 arising out of Motijheel P.S. Case

CaseNote: Code of Criminal procedure (V of 1898)

Section - 339

The section, whether will be precluded from operation in cases under Criminal Law Amendment Act; 1958, merely because 339-D mentions the cases stopped tinder sub-section 4 of section 339C.

Held: Section 339-D of Criminal Procedure Code will not be precluded from operation in cases under Criminal Law Amendment. Act, 1958, merely because 339-D mentions the cases stopped under sub-section 4 of section 339C which is applicable in respect of cases under the Criminal Law Amendment Act in view of section 6(1) of the said Act.

Niamat Ali Sheikh and others Vs. Begum Enayeiur Noor others, 42 D.L.R, (AD) 150--Cited

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7. A.F. Shahab Uddin Ahmed vs. National Shooting Federation, Bangladesh and Others (12.12.2010 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Hon'ble Judges/Coram: A.H.M. Shamsuddin Choudhury and Sheikh Md Counsels: For Appellant/Petitioner/Plaintiff: Mr. Masood

CaseNote: Commercial - Registered lease deed - Violation of - Rule issued calling upon respondents to show cause as to why impugned decision, to lease out subject property in alleged violation of terms and conditions of RAJUK's registered lease deed, should not be declared to have been passed illegally - Whether respondent illegally leased out subject property - Held, issue is whether it is open to Respondent No. 1 to act in breach of law by flouting provision contained in agreement subject to which Respondent No. 4 conveyed land to Respondent No. 1 - If Respondent No. 1 flouts covenant by which it bound itself not to alienate property, lessor shall be entitle to revoke lease - Body like Respondent No. 1 should not be allowed to use land for purpose other than one for which land was virtually gifted - Respondents restrained from leasing subject property to anybody under any circumstance - Disposed of. [119]

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8. A.H.M. Abdul Hai vs. Bangladesh and others (23.11.1978 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 31 of 1978 Appellants: A.H.M. Abdul Hai Vs. Respondent: Bangladesh and others But the said case ended in

Cited in DB

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9. A.H.M. Alamgir vs. Revenue Officer, Chittagong WASA, Dampara and Ors. (07.02.2005 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 1556 of 2001 Hon'ble Judges/Coram: Quamrul Islam Siddiqui, J Acts/Rules/Orders: Code of Civil Procedure

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10. A.H.M. Mustain Billah and 4 others vs. Govt. of Bangladesh and 60 others (21.08.2000 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 132 of 1998 the Administrative Appellate Tribunal in Appeal No. **74** of 1997 arising out of A.T. Case No

CaseNote: BCS Seniority Rules, 1983

Rule - 3(e)

Rule 3(e) of the BCS Seniority Rules, 1983 is not applicable for determining the seniority of the appellants as well as of the respondents as they were directly recruited on the basis of two different advertisements, whereas Rule 3(e) is applicable only in case of determining seniority involving lateral entrance.

Rule--3(g)

There was no need to give retrospective effect to the amended provision of sub rule 3(g) because the seniority position of the respondents was always above the appellants batch. Government always reserves the right to fix seniority according to existing rules and principles.

Constitution of Bangladesh, 1972

Article--133

Under Article 133 of the Constitution the Rules framed by the President will take effect both prospectively or retrospectively.

Joynal Abedin and another Vs. Government of Bangladesh, 34DLR (HCD) 77--relied.

State of Bihar Vs. Modan Mohan Sing, : AIR 1974 SC765; Md. Abdul Mannan Vs. Md. Hassan Mahmud, 16BLD (AD) 147--Not applicable

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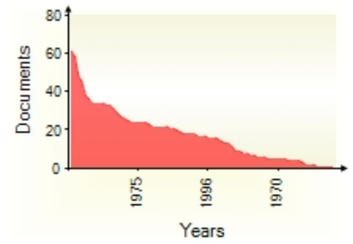

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Absence (510)
Accused (413)

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11. A.H.M. Mustain Billah and Ors. vs. Bangladesh and Ors. (24.05.2004 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 38 of 2002 and C.P. No. 826 of 1998 Ruhul Amin, Mohammad Fazlul Karim, M.M. Ruhul Amin, Md

12. A.H.M. Mustain Billah and Ors. vs. Govt. of Bangladesh and Ors. (16.08.2000 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 132 of 1998 the Administrative Appellate Tribunal in Appeal No. **74** of 1997 arising out of A.T. Case No

13. A.H.M. Mustain Billah and others vs. Bangladesh represented by the Sec. Mini. of Establishment and ors. (23.05.2004 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 38 of 2002 and Civil Petition For Leave To Appeal No. 826 of 1998 Ruhul Amin, Mohammad Fazlul Karim, M.M

CaseNote: BCS Seniority Rules. 1983

Rule 3(g)

Bangladesh Civil Service (Administration) and Bangladesh Civil Service (Secretariat) Unification Order, 1992

Service (Reorganization and Conditions) Act, 1975

Section - 4

Upon unification of the two Cadre in 1992 on the basis of Bangladesh Civil Service (Administration) and Bangladesh Civil Service (Secretariat) Unification Order, 1992 making them belong to one unified Administrative Cadre pursuant to the provision of section 4 of the Service (Re-Organization and Conditions) Act, 1975, a fresh notification further clarified the position of the officers recruited in BCS Administration Cadre unifying those with BCS Secretarial Cadre, reiterating the 'notional' seniority of the appellants and respondent no. 2-61 and such unification is not illegal as done under section 4 of Act, 1975 passed in accordance with the provisions of Article 136 of the Constitution

14. A.H.M. Siddique vs. The State (04.11.1990 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Criminal appellate No. 54 of 1988 1,**74**,284.84 paisa drawn on Janata Bank, BRTC Branch, but later requested the complainant

CaseNote: Code of Criminal Procedure, 1898 (Act V of 1898)

Sections 504.

The expression Property" occurring in section 504 of the Criminal Procedure Code, whether should be given a narrow construction.

Penal Code 1860 (Act XLV of 1860).

Section 409.

Mere delay in payment of money entrusted to a person, whether amounts to misappropriation.

Section 405.

Mere inability to pay back a sum of money entrusted, the Sale proceeds of a property entrusted, whether will establish the fact of criminal misappropriation.

Held: (i) The expression "property" occurring in Section 405 of the Criminal Procedure Code should not be given a narrow construction. Blank forms of tickets are also property when the same are converted into tickets after sale.

(ii) Mere delay in payment of money entrusted to a person, when there was no particular obligation to pay at a certain date, does not amount to misappropriation.

(iii) Mere inability to pay back a sum of money entrusted, the sale proceeds of a property entrusted will not establish the fact of criminal misappropriation, if mens rea is not established. The prosecution must establish, apart from entrustment, also that the accused had dishonestly misappropriated the property entrusted.

Sukur Hussain Vs. The State, 9DLR. (SC) 14; Munusami Nainar vs. Emperor, 31 Cr. L.J. (1930) 1198; Rex vs. Krishnan, A.I.R. (1940) 330; Sardar Singh Vs. The State of Hariana, AIR (1976)(SC)1966--Cited

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15. A.J.M. HELAL vs. BANGLADESH AND OTHERS (09.02.2009 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION 12 BLC-22; AHN Kabir v. Bangladesh 13 BLC-686; Akhter Hossain v. Hasmat Ali 60 **DLR**-368; Md Mofiz Mia v. Artho Rin Adalat and

CaseNote: The requirement of 50% deposit of cheque amount at the time of filing an appeal in the, Court under the provisions of section 138A of the Act is not violative to the provisions of the Constitution.

Negotiable Instrument Act being a procedural law, there is no bar in giving its effect retrospectively and more so by the Act there is no difference in awarding sentence if any upon the accused.

There is no possible reason to hold that the provisions of section 138A of the Act will not apply in those cases which were filed before the said section came into force

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16. A.J.M. Helal and Ors. vs. Bangladesh and Ors. (09.02.2009 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Hon'ble Judges/Coram: Muhammad Imman Ali and Sheikh Abdul Awal, JJ Counsels: For Appellant/Petitioner/Plaintiff: Md

CaseNote: Civil - Maintainability of suit - Section 138(1) and 133 of Negotiable Instrument Act, 1881 (NIA); Section 561A of Criminal Procedure Code, 1898 and Articles 27, 31, 40 and 42 of Constitutionof Bangladesh - Appeal against judgment and order convicting petitioner under Section 138(1) of NIA- Whether writ petition maintainable or not? - Held, disputed questions of fact such as blank cheque and other goods were forcibly taken away by complainant from accused before filing of petition of complaint under Section 138 of Act cannot be decided in writ jurisdiction - Convict may invoke inherent jurisdiction of Court under Section 561A of Code if he can make out case of coram non judice of trial Court - Mere allegation of violation of provisions of law cannot give rise to cause of action for filing writ petition when there is forum for seeking remedy against impugned order - Provision of Section 133A of Act is not violative of Articles 27, 31, 40 and 42 of Constitution - Rules discharged. [38], [39], [40], [41]

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17. A.K. REAZUL KARIM vs. THE STATE (30.05.1983 - BDAD) Add to session list

SC 1065 ; Mohammad Sarwar V. The State, 21 **DLR** (SC) 182-PLD 1969 (SC) 278; Ghulam Abbas V. The State, 20 **DLR** (WP) 48 PLD 1968 Lah 101 ; Lakshminararyan V

CaseNote: (a) Per B.H. Chowdhury, J (Munim, CJ & Mohsen Ali, J concurring). - Offence under Customs Act--Question of jurisdiction to investigation such offence--By amendment the offence under the Customs Act have been brought within the schedule to the Anti-Corruption Act, 1957--The investigation in an offence under the Customs Act, only commences when the offence itself is committed--When the goods are still in custody of the Customs and the same had not been released the question of any collusion between the Customs officer and the owner of the goods for evading the customs duty do not arise--Anti-Corruption officer had no jurisdiction to interfere with the work of the Customs officer and he could not claim to open packages because no such function was entrusted on him by law--Even if he suspects some of the Customs officers are in collusion with the importer he will only wait until the goods are released or decisive action is taken--Customs Act, 1969 (IV of 1969) S. 156 (81) & (82) and the prevention of Corruption Act (11 of 1947). S.5(2)

The Deputy Superintendent, Customs Preventive, West Bengal V. Sitaram Navsaria & another. : AIR 1968 Cal 274; Illias V. The Collector of Customs, : AIR 1970 SC 1065 ; Mohammad Sarwar V. The State, 21 DLR (SC) 182-PLD 1969 (SC) 278; Ghulam Abbas V. The State, 20 DLR (WP) 48 PLD 1968 Lah 101 ; Lakshminararyan V. Collector of Customs, : AIR 1961 Cal 616; Vasantalal Ramehhoddas Patel and others V. Union of India and others, : AIR 1967 Bom 138 discussed.

Per F.K.M.A. Munim, CJ. (Concurring) :--, The Bureau of Anti-Corruption can come into hold an enquiry into any offence under the Customs Act when similar enquiry has either been completed as contemplated by the Act or when no such enquiry has at all

been undertaken by the Customs Authority. The former begins when the latter has ended or did not at all start and the time for holding the enquiry has expired. The time for such enquiry being still open to the Customs officers any claim by the Bureau of Anti-Corruption to start an investigation would not only lead to chaos and confustion but such premature attempt would lead to the frustration of the legislature's aims and objects. Claim to exercise legal power whether conferred by an Act of the legislature or by any subordinate legislation thereunder requires adjustments and moditication. Besides, there is the need of maintaining departmental courtesy. When apparently there have been such conflicting claims by the two departments the matter should have been referred to the Ministry of law or even the Government for their opinion by any one or both the department concerned.

Per S. Ahmed, J (Dessenting) : The Anti-Corruption officer exercised jurisdiction to investingate the offence of 'smuggling' which was prima facie committed by the importer. In a cognizable offence the police got right to move into action the very moment it is committed. That the Customs officer got similar jurisdiction to deal with Custom offences does not stand in the way of investigation by the Anti-Corruption. Acceptance of argument that the Anti-Corruption shall not exercise jurisdiction unless the Customs authorities give clearance will lead to the drawing up of an arbitray line of demarcation. Reference has been made to some decisions of the Indian jurisdiction. These decisions are founded on the Customs Act only as there is no law in India corresponding to Anti-Corruption Act of Bangladesh covering Customs offences. The Anti-Corruption Officer is found to have acted under the authority of an independent law. In the face of legal provisions conferring jurisdiction upon other forums, claim of exclusive jurisdiction by the Custom Officers is without any foundation.

Per Masud, J : (dissenting) :--There is nothing in the Customs Act to hold that the Bureau of Anti-Corruption cannot enquire into and investigate offences punishable under section 156 of the Act unless they are called upon to do so by the Customs Authority.

(b) Sanction for prosecution--Its purpose The provision for sanction is intended to protect officers of the Government from harassment by unnecessary prosecution. No prosecution shall lie against the public servants without prior sanction--If the Board of Revenue had reason to believe that these Custom officers acted bonafide and had no 'mens rea' the Board could have refused sanction--Criminal law Amendment Act (XL of 1958) S.6(5)

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18. A.K. Reazul Karim vs. State (17.08.1983 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Appellants: A.K. Reazul Karim Vs. Respondent: State Counsels: For Appellant/Petitioner/Plaintiff: Mainul Hosein, Advocate

CaseNote: Criminal - Proceedings - Quashing of - Present appeals arises against judgement and order passed by High Court Division which contended that question of obtaining pecuniary advantage within meaning of Prevention of Corruption Act does not arise and criminal prosecution be quashed - Whether judgement and order under challenge need interference - Held, District Anti-Corruption Officer misconstrued subject notification - In purported exercise of such jurisdiction attempted to perform certain functions under Customs Act - Law specifically confers such power upon Customs Officer who is appropriate officer so to do - Action of Anti-Corruption Officer was premature - Proceedings quashed - Appeal allowed. [53]

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19. A.K.M. Abdur Rashid and others vs. The State (15.12.1977 - BDHC) Add to session list

On 15.5.**74** the prayer for shifting the date of trial was allowed and 8.7.**74** was fixed as the date of trial

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20. A.K.M. Enayet Ullah vs. Bangladesh, represented by the Secretary and others (14.03.2013 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 2505 of 2011 Hon'ble Judges/Coram: Mirza Hussain Haider and Muhammad Khurshid Alam Sarkar, JJ

CaseNote: Duty of concerned Ministry

Whenever any matter is forwarded by the Prime Minister to any Ministry, it becomes imperative on the part of the concerned Ministry to make a decision on the said matter or, in the alternative to place the matter before the Prime Minister for decision thereto.

Since by channeling the petitioner's matter from one Ministry to the other Ministry aiming at disposal of the same, the said Ministry of Public Administration acted in a manner which raised a legitimate expectation in the mind of the petitioner that the said Ministry will make decision on his claim and, furthermore, since in the said process of moving from one Ministry to the other Ministry his A.A.T. Appeal No. 92/2007 was withdrawn to his disadvantage and, by now, nearly 4 (four) years have elapsed since the time of placing the petitioner's application to the Prime Minister on 22.03.2009, the Ministry of Public Administration is estopped from stepping back in making a decision on the petitioner's matter.

Government servant

"Government servant" as it includes any one employed in the service of the Republic as well as under Statutory Public Authority meaning "any authority, corporation or body the activities or the principal activities of which are authorised by any Act,

ordinance, order or instrument having the force of law in Bangladesh" as provided for in Article 152 of the Constitution and, thus, not the "Statutory Public Authority" as defined in the definition clause of the Administrative Tribunal Act, 1980.

Jurisdiction of Administrative Tribunal

Any matter of a person in the service of the Republic relating to or arising out of his service during the period of his service or after his retirement from service, shall be dealt with by the Administrative Tribunal.

Maintainability of Writ by Government Servants

Writs by Government servants are maintainable in the Following: cases namely (1) cases where writ petitions were held to be maintainable on the ground of challenging vires of Law, (II) cases where Corum-non-judice malafide and malice in law have been discussed (iii) cases where Appellate Division has outright rejected writ petitions to be not maintainable and (iv) writ petitions which have been held to be maintainable on the ground of being employees under project of the government.

Efficacious remedy for service matters

Efficacious remedy should not be conceded to by this Court for service matters of the government servants inasmuch as it is not applicable where the Constitution has made a specific forum for government servants.

Administrative Tribunal

Administrative Tribunal is not an ordinary forum as has been provided in other laws of our land, such as, Customs Act. Income Tax Ordinance, Public University Ordinance/Acts etc where in spite of providing appellate forum, this Court often tends to entertain writ petitions despite not approaching the original forum or preferring the appellate forum as laid down in those Acts/Ordinance, considering the exigencies of the facts of the cases.

Non-action on representation and approach to Tribunal.

Non-action on the said representation the petitioner could have approached the Tribunal.

Back-log and congestion of cases

Entertainment of these sorts of petitions is causing congestion in this Division, which is already overwhelmingly overburdened with huge backlog of cases.

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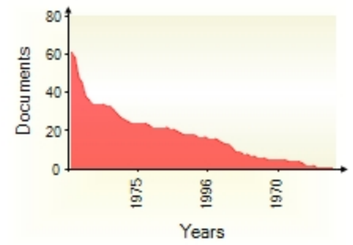
Timeline



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Court
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2021 (18)

Act Rule Order
Code of Civil Procedure 1908 (CPC) - Order IX Rule 13 (22)

Subject
Administrative Law (46)
Administrative law (1)

Judge
A.B.M. Khairul Haque (23)
A.F.M. Abdur Rahman (13)

Keywords
Absence (510)
Accused (413)

Display in Results : Excerpt CaseNote

21. A.K.M. Faizur Rahman and Ors. vs. The Commissioner of Taxes, Taxes Zone-4, Dhaka and Ors. (10.05.2012 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Ashfaqul Islam and Mustafa Zaman Islam, JJ Counsels: For Appellant/Petitioner/Plaintiff: A.F. Hasan Arif, Senior Advocate

22. A.K.M. Kawsar Ahmed and Others vs. Bangladesh and Others (17.10.2012 - - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 447 of 2012 Hon'ble Judges/Coram: Hasan Foez Siddique and A.B.M. Altaf Hossain, JJ

CaseNote: Service - Promotion - Gazetted Officer (Registration Department) Recruitment Rules, 1979 - Writ Petition filed to declare amended Rules in relation to Petitioners' promotion declared as illegal - Whether eligibility criteria for promotion against posts of sub-Registrar amongst posts of Head Assistants and Head Clerks as contained in Rules requiring Petitioners to have Bachelor's Degree from recognized University with at least ten years service was to be declared as illegal - Held, Petitioners joined service in view of future prospects - Amended Rules did not have retrospective effect and therefore Petitioners could not be put under amended Rules which change conditions of service and alter advantage of employee - Prior to amended Rules coming into force Petitioners' promotion was governed by Rules - There was no prior notice given to Petitioners - Respondents failed to explain public interest to change terms and conditions of Petitioners' promotion - Eligibility criteria for promotion against post of Sub-Registrar amongst posts of Head Assistant and Upper Division Assistants of registration Directorate and head clerk/Head Assistants of District Registration office under Rules was declared to be illegal so far as it relates to Petitioners - Respondents were directed to apply un amended Rules for promotion of Petitioners against post of Sub-Registrar - Rule made absolute. [64], [67],[68], [83]

Cited in DB

23. A.K.M. Mosharraf Hossain vs. State and Another (10.10.2013 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Criminal Appeal No. 921 of 1992 Appellants: A.K.M. Mosharraf Hossain Vs. Respondent: State and Another

CaseNote: Criminal - Conviction - Challenge thereof - Section 5 (2) of Prevention of Corruption Act, 1947 - Present appeal against order passed by Special Tribunal convicting Appellant under Section 5 (2) of Act, 1947 - Whether prosecution has proved charge under section 5 (2) of Act, 1947 as against convict-Appellant - Held, it was duty of convict-Appellant to write both organizations to make adjustment after signing contract with Government - Convict-Appellant withdraw entire benefit of his contract service and kept in his custody which can be termed as abuse of his position as public servant - Moreover, admission of convict-Appellant made in course of examination shows that he had dishonest intention or Mens rea in his mind - Thus, prosecution has been able to prove charge under section 5 (2) of Act, 1947 as against convict-Appellant - However, it is evident that convict-Appellant spent a considerable period in jail hajat and is an age old freedom fighter - Therefore, ends of justice would be met if it is ordered to award sentence, already under gone by him - Hence, appeal is dismissed with modification of sentence only. [74], [78]

24. A.K.M. Mozammel Huq vs. ADC (General), Gazipur and Ors. (16.03.2003 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 220 of 1999 the number of the Notification was **74**-L/85-X/3C-39/82 dated Dhaka, the 11th February 1985

25. A.K.M. Shafiuddin vs. Bangladesh, Represented by The Secretary, Ministry of Law, Justice and Parliamentary Affairs and Others (24.07.2012 - BDHC)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 9416 of 2012 People's Republic Of Bangladesh - Article **74**, Constitution Of The People's Republic Of

CaseNote: Constitution - Violation of provision - Article 78(1) of Constitution of People's Republic of Bangladesh - Petition filed to declaration that ruling of Speaker that Judge of High Court Division has violated Article 78(1) of Constitution as illegal - Whether ruling of Speaker was without lawful authority and of no legal effect - Held, Speaker has not stated anything in his ruling regarding pendency of any proceeding questioning validity of any proceeding of Parliament - Violation of provision of Article 78(1) of Constitution were absent - There was no violation of Article 78(1) of Constitution - Conduct of a Judge in relation to discharge of his duties could not be subject matter of action in exercise of powers and privileges of House - Impugned observations that a certain Judge has violated provision of Article 78(1) of Constitution have got no legal effect - Petitioner was an Advocate of Supreme Court and therefore petition made by him was maintainable - Petition disposed of. [18], [28],[33], [44]

Cited in DB

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26. A.K.M.A. MATIN vs. ABDUL KHALEQUE SIDDIQUI (05.03.1986 - BDHC)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Hon'ble Judges/Coram: Fazlay Hossain Mohammad Khalilur Rahman and another repoted in 37 **DLR** (AD) 21 = 1985 BLD (AD) 41

CaseNote: Specific performance of contract - Exercise of discretion to decree or not to decree such suit though contract proved--Payment of solatium to the defendant when to be paid--When the defendant is going to transfer the suit property to others there is no reason not to decree the suit for specific performance of contract--though the price of the suit property is not shockingly low the present market price will be much higher--So the plaintiff should pay a reasonable sum as solatium to the defendant for the ends of justice--Tk. 3,00,000/00 to be paid as solatum in addition to the balance consideration of Tk. 1,20,100/00--Specific relief Act (1 of 1877) S. 22.

Ram Chandra Das V. Md. Khalilur Rahman 37 DLR (AD) 21=1985 BLD(AD)41 relied.

Jogesh Chandra Das V. Farida Hasan 1983 BLD(AD)225 distinguished

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27. A.K.N. Ahmed and Ors. vs. Abdul Mannan and Ors. (06.02.1979 - BDHC)

Add to session list

the judgment and order dated 25.2.**74** of the said Labour Court directing reinstatement of another Vs. Chairman Labour Court, Chittagong and another reported in 30 **D.L.R.** (S.C.) 251

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28. A.K.R. Ahmed and 20 others vs. The Govt. of East Bengal (23.02.1951 - HEPK)

Add to session list

Appellants: A.K.R. Ahmed and 20 others Vs. Respondent: The Govt Hon'ble Judges: Amin Ahmed and S. Afzal, JJ Nirmal Kumar Sen Vs. The Crown 55 C.W.N. 3 **DLR** 25 followed

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29. A.Q.M. SHAH ALAM CHOWDHURY vs. GOVT. OF BANGLADESH AND OTHERS (29.10.2007 - BDAD)

Add to session list

Islam vs. National Bank Limited and others, 46 **DLR**(AD)191 and in the case of M.A. Hai Md 2,23,80,407.**74**/- due as on 30.09.99 along with pendentilite and post decretal interest and

CaseNote: Provisions of Section 12(2) of Artha Rin Adalat Ain, 2003 does not apply to the instant suit as no property of the company or respondent No. 8 was in possession and control of the bank by way of lien or mortgage.

Section 12(3) of Ain, 2003 provides that if any financial institution advances loan to the debtor by taking mortgage of immovable property or by way of hypothecation of movable property and if power of attorney is given to the financial institution at the time of mortgaging or hypothecating the property then, instead of selling the property and adjusting the sale proceeds against the loan amount, no suit can be filed by any financial institution before the Artha Rin Adalat Section 12(1) of Ain 2003 provides that if any financial institution does not follow the provisions as laid down in the proviso of the above sub-section (2) and (3), the Court, on its own initiative or on the written application of the debtor, shall pass a decree deducting the value, if any shown by the financial institution and if the valuation has not been shown, the Court may evaluate its price on the basis of report of the local Sub Registrar and pass decree deducting such an amount as claimed in the suit

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30. A.T. Mridha and Ors. vs. State (31.05.1973 - BDHC)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Hon'ble Judges/Coram: A.F.M. Ahasanuddin Chowdhury and Badrul Haider Chowdhury, JJ Acts/Rules/Orders: Code of Criminal

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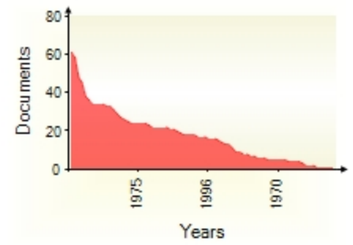

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A.F.M. Abdur Rahman (13)

Keywords

Absence (510)

Accused (413)

Display in Results : Excerpt CaseNote

31. A.T.M. Azharul Islam vs. The Chief Prosecutor, International Crimes Tribunal, Dhaka (31.10.2019 - BDAD)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Criminal Appeal No. 12 of 2015 Hon'ble Judges/Coram: Syed Mahmud Hossain, C.J., Hasan Foez Siddique, Zinat Ara and Md

32. A.T.M. Shamsul Alam and Ors. vs. Bangladesh and Ors. (02.12.2014 - BDHC)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Hon'ble Judges/Coram: Sheikh Hassan Arif and Mohammad Ullah, JJ Counsels: For Appellant/Petitioner/Plaintiff: Md

CaseNote: Banking - Encashment of deposit - Writ Petitions filed impugning notification directing immediate encashment and adjustment of relevant staff housing loans which were granting in favour of retired enjoying executives officers and staff of Janata Bank against savings bonds ☐ and fixed deposits - Whether Respondents issued direction notification without lawful authority - Held, relationship between bank and its employees in so far as credit facilities obtained by them under scheme was nothing but relationship of lender and borrower - Relationship between Petitioners and bank under scheme became relationship of borrower and lender - Impugned action taken by bank unilaterally cancelling relationship of borrower and lender was not an action taken by employer against employee - Petitioners were entitled to approach Court under writ jurisdiction - No prior notice was issued upon Petitioners before issuance of notification - Bank could not act in unreasonable manner - Rules made absolute. [20], [30], [31], [33], [34]

33. A.T.S. Paul vs. E.M. Wijerama and 9 Others (24.04.1972 - SLHC)

Add to session list

Hon'ble Judges: Alles and Wijayatilake, JJ Counsels: For Appellant/Petitioner/Plaintiff: H.W. Jayewardene, Q.C with C. Ranganathan, Q.C., George Candappa, Mark Fernando and

34. A.Y. Ahmed Ali vs. Dr. Jamshed Ali and ors. (28.11.1980 - BDHC)

Add to session list

sale preferred a revisional application on 17.12.**74** under section 53 of the P.D.R. Act Collector, Rev., Faridpur reported in 14 **DLR** 753 a Division Bench of the then East

35. ABANI MOHAN SAHA vs. ASSISTANT CUSTODIAN (S.D.O.) VESTED PROPERTY, CHANDPUR and ORS. (20.02.1986 - BDAD)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION PR/0002/1943 : AIR 1943 P.C. 83 (86); Abul Khair Mia v. Bangladesh and others 32 **DLR**(AD)29 The certified copy could not be

CaseNote:

Majority per M.H. Rahman J (F. Munim C.J., S. Ahmed & A.T.M. Afzal JJ. concurring)

Execution of document - Whether Registrar's endorsement is conclusive proof of execution--The certificate of the Registrar raises a presumption as to the admission of execution by the executants--But such admission cannot be evidence of due execution against third persons--The execution of document is to be proved in a manner as provided under the Evidence Act and when witnesses are available to prove a questioned document the court may not take recourse to any presumption under

the Registration Act--But in an appropriate case a presumption may be raised when evidence to prove execution is not available--Registration Act (XVI of 1908) S. 60(2)--Evidence Act (1 of 1972) S. 67.

Per B.H. Chowdhury J (dissenting): Section 78 read with section 79 of the Evidence Act provide for the proof of the certified copies and presumption as to genuineness of such certified copies. The plaintiff has given explanation that the original was burnt. The certified copy could not be brushed aside in the way it has been done by the courts below. It is unfortunate that even the courts did not notice section 68 of the Evidence Act which provides as to the mode of proof of the execution of document required by law to be attested. That was not the case here. The executant did not deny the execution. Reliance, on oral evidence of the interested witnesses in utter disregard of the principles propounded by the law of evidence tantamounts to open a door for extraneous considerations thereby jeoperdizing judicial thinking and its process. The finding which is arrived at not by following the usual procedure cannot be finding sustainable by law.

Gongamoyi Debi V. Troiluckhya Nath Chowdhury and another, 33 I.A. 60, Muhammad Cherag V. Dullav Khan, PLD 1954 (Dhaka) 134, Ihtishan Ali V. Jamna Prasad and others 48 I.A. 365=AIR 1922 (P.C) 56; Gopal Das V. Sri Thakurji : AIR 1943 P.C. 83 (86) relied

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36. ABB India Limited vs. Power Grid Company of Bangladesh Ltd. and Ors. (02.03.2020 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION 2; Code of Civil Procedure, 1908 (CPC) - Section 141; Contract Act, 1872 - Section **74** The PGCB is the sole electric power

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37. ABDUL HAFEZ and ANO. vs. LAL MEAH ORS (14.04.1986 - BDHC) Add to session list

others V. Zahiruddin Kari and others 30 **DLR**(AD)81; Maherjan Bibi V. Naimuddin Dhali being dead Raisuddin and other, 33 **DLR** 127 relied

CaseNote: (a) Maintainability of suit - When payment of ad valorem court fee itself does not make the suit maintainable--It cannot be said that merely because the plaintiffs paid ad valorem court-fees the suit in effect became a suit for title and possession--The subordinate Judge has correctly found that the suit as framed is not maintainable in as much as no relief can be given as per negative, contradictory and vague prayer in the plaint--Code of Civil Procedure (V of 1908) Or. 6 r.

Pakistan v. Muhammad Abdul Kuddus, Income Tax Officer, : 20 DLR 332; Most. Rokeya Khatun V. Elias Molla and others, 28 DLR 181 distinguished.

(b) Suit for declaration of title--Question of starting point for limitation--The plaintiff is not bound to institute a suit for declaration that the entry in the record of rights is wrong--He can wait and sue when invasion on his right is made--Limitation Act (IX of 1908) Art. 120.

Rai Kran Chandra Roy Bahadur and others V. Tarak Nath Gongopadhyay and others, 40 CWN 566 ref.

(c) Entry in a record of right--Presumption of correctness--The subordinate Judge has correctly found that there is no direct evidence in the case to rebut the presumption of correctness of the R.S. Khatian.

Fazlur Rahman V. Naghendra Krishan Roy and thus, 17 CWN 151; Prodyot Kumar Sen Gupa V. Naghendra Kumar Chowdhury, 52 CWN. 72; Akbar All and others V. Zahiruddin Kari and others 30 DLR(AD)81; Maherjan Bibi V. Naimuddin Dhali being dead Raisuddin and other, 33 DLR 127 relied

Cited in DB

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38. ABDUL HANNAN vs. THE STATE (29.06.2008 - BDHC) Add to session list

Khan v. state : : LEX/BDHC/0030/2003 : 55 **DLR** 547; Abdur Rashid v. the state 27 **DLR** (AD) 1; state v. Sabir Mia and others 11 BLT 294; Asiman Begum v. State 51 **DLR** (AD) 18

CaseNote: Right of an accused to be defended by appointing a lawyer in a case charged under. section 302 of the Penal Code, being punish able with death, is an inalienable right guar anteed in the law of our land and if any trial takes place in refusing such fundamental right, the trial is misnomer and the judgment passed in such trial convicting an accused is no judgment in the eye of law.

Before a confession can be accepted, in evidence, it must be established by cogent evidence what were the exact words used by the accused. Even if so much is established, prudence and justice demand, that such evidence can not be made the sole .ground of conviction. It may be used only as a corroborative piece of evidence. The rule of prudence does not require that; each and every circumstances mentioned in the confession with regard to the participation of the accused person in the crime must be separately and independently corroborated, nor it is essential that the corroboration must come from facts and circumstances, discovered after the confession was made.

Evidence of prosecution witnesses are full of discrepancies and inconsistencies which are unworthy of credit. The discrepancies in the testimonies of the prosecution witnesses in this case are so fatal which render the prosecution case doubtful.

It appears from the evidence on record that the learned Sessions Judge, Narayangonj did not give any legal aid to the

absconding appellant Abdul Hannan and others in this case. It further appears from me evidence on record that he framed charges against the absconding accused under section 302/34 of the Penal Code and section 302 of the Penal Code prescribes

capital punishment and as such we are of the view that it was the duty of the learned Sessions Judge to take step or himself appoint a competent advocate to rep resent the absconding accused. Failure of the learned Judge to help the accused through a lawyer had vitiated the entire trial and as such the impugned judgment and order complained of cannot be maintainable

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39. ABDUL JALIL MIAH vs. SIDDIQUR RAHMAN BEING DEAD HIS HEIRS MIZANUR RAHMAN AND OTHERS (02.07.2009 - BDHC)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 1353 of 1997 Hon'ble Judges/Coram: Syed Abu Kowser Md For Respondents/Defendant: Abdul Quaiyum with

CaseNote: The learned Courts below without applying their judicial mind and without considering the legal bearing of so-called Salishnama came to a wrong and erroneous finding in dismissing the suit of the plaintiff which is liable to be interfered by this Court.

On a meticulous examination of the evidence on record papers, documents and exhibits it transpires that both the Courts below did not take into consideration the vital legal implication under Section 118 of the Transfer of Property Act. The learned Courts below by non-considering the legal aspect of the case acted illegally in dismissing the suit of the plaintiff. In the eye of law so-called Salishnama cannot be treated as an instrument of exchange deed and a valid document and virtually no exchange deed in pursuance of so-called Salishnama was executed

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40. ABDUL MALIK and OTHERS vs. THE STATE (19.04.1984 - BDHC)

Add to session list

State V. Minhun @ Gul Hossain 16 **DLR** (SC) 598; Joygun Bibi V. The State 12 **DLR** (SC) 157; Moqbul Hossain V. The State, 12 **DLR**(SC) 217; State V. Fazu Kazi 29 **DLR**(AD

CaseNote: (a) Retracted confession - Whether can be the sole bash of conviction--The confession made by an accused even if retracted can form the sole basis of conviction of its maker if the confession is found to be voluntary and true--Evidence Act (1 of 1872)S.30.

State V. Minhun @ Gul Hossain 16 DLR (SC) 598; Joygun Bibi V. The State 12 DLR (SC) 157; Moqbul Hossain V. The State, 12 DLR(SC) 217; State V. Fazu Kazi 29 DLR(AD) 271: Pangambam Kalajoy Singh V. State of Manipur. AIR 1956 (SC) 9; Sarwan Singh Rattan Singh V. The State of Punjab AIR 1957(SC) 637; Sarwan and others V. The State I DLR(SC) 61 ref.

(b) Confession of co-accused--Confession by accused affecting himself and other persons--Confession made by one of the accused persons affecting himself and some other persons if proved can be taken into consideration against other accused persons as well--Evidence Act, (I of 1872)S.30.

Emperor V. Lalit Mohan Chukerbuty and others. ILR 38 Cal 559; Laxam Jairan and another V. Emperor. : AIR 1937 Bom 31; Bhuboni Saha V. The King 76 IA 147; Moqbul Hossain V. The State 12 DLR(SC) 217; Periyaswami Moopan 1931 ILR 54 Mad 75; Lutfun Nahar Begum V. The State 27 DLR (AD) 29; Ganga Ram and another V. Crown 60 IC 786 Lah.

(c) Corroboration--Whether confession of an accused can be used for corroboration--Confession of one accused cannot be used to corroborate the confession of another accused for the purpose of convicting the other accused who have not confessed--Evidence Act (1 of 1872) 5.30.

State V. Mukhtar Ali and another 10 DLR (Dhaka) 155 relied

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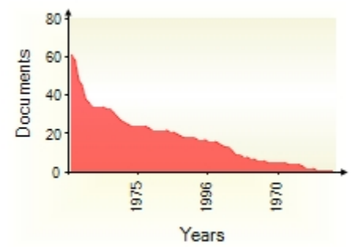
Timeline



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Court
SUPREME COURT OF BANGLADESH (APPELLATE DIVISION) (303)

Year
2022 (21)
2021 (18)

Act Rule Order
Code of Civil Procedure 1908 (CPC) - Order IX Rule 13 (22)

Subject
Administrative Law (46)
Administrative law (1)

Judge
A.B.M. Khairul Haque (23)
A.F.M. Abdur Rahman (13)

Keywords
Absence (510)
Accused (413)

Display in Results : Excerpt CaseNote

41. ABDUL MANNAF KHAN and ORS. vs. BANGLADESH and ANOTHER (22.08.1984 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION AIR 1920 Cal 255 at p. 256 S.M. Nurul Huq V. Province of East Pakistan, (1973) 25 **DLR** V. Tamiruddin 10 **DLR** 523 distinguished

CaseNote: (a) Majority (per Munim C.J. Masud & Moshen All JJ. coucurring) Hats and Bazars-Meaning of- It means a place where people assemble daily or on particular days in a week for selling and buyng goods and incudes all shops of such articles or manufactured articles within such place - Franchise of a market--What it means--It is a royal previlage subsisting in a subject by grant-Whether it is available in our country-Appellants claim that Salimabad hat has the franchise from 1850 A.D. to sit on Tuesday and Friday in a week does not find support in law or the pronouncement of any suprior court in this subcontinent-State Acquisition & Tenancy Act (XXVII of 1951) S.2(12)

S.M. Nurul Huq V. Province of East Pakistan, (1973) 25 DLR. 476; Halsburly's Laws of England, Vol. XXV. Third Ed. page 381. Strouds Judicial Dictionary, 4th Ed Vol. 13, P 1925; Re Islington Market Bill (1925-42) All ER. 323 P. 325; Attorney General V. Hornor (1884-85) QB. Vol. 14 P. 245; Hammerton V. Earl of Dysart. 1916 A C.P. 57 at P. 88; Stroud's Judicial Dictionery, 4th Ed. Vol. 2.P. 1093; Rakhal Das Addy V, Durg, ILR 1890 Cal Vol. 17, P. 458; Hem Chandra Roy Chowdhury V. Kristo Chandra Sha Sardar, AIR 1920 Cal 255 P. 256 relied.

(b) Hats and Bnzars- Elements of-If sitting days' of a hat or 'Market' constitute one of its essential elements the places, where if sits is also no less an essential element--Right to hold a hat is connected with the ownership of the land on which it is held-State Acquisition & Tenency Act (XXVIII of 1951) S.2(12)

(c) Hats and bazars--Govt's direction to fix sitting days--After the acquisition of hats and bazars, the discretion of the Govt. to fix days on which a particular hat is to sit cannot be interfered with by anybody else--If after making inquiry and local inspection, the Govt. has fixed the 'days court has no authority to alter them on the ground that Govt. decision has been arbitrary or illegal-State Acquisition and Tenancy Act (XXVIII of 1957) S. 2(12)

Nurul Islam V. Bangladesh : 1981 BLD 140 (AD): Secretary of State V. Tameside (1976) 3 All E.R. 665 distinguished

Per B.H. Chowdhury J(dissenting). No error could be said to be apparent on the face of the record of it was not self evident. It is too late in the day to say that an executive decision is beyond scrutiny in the civil court Sec. 9 C.P.C. is an answer. Long line of decisions of the superior court point out that such immunity cannot be claimed unless such suit is barred by law specifically. If any hat allowed to continue then the date of its sitting becomes important. The date is determined by economic factors and once the date of its assembly fulfils the economic aspiration of the locality then it attracts the custom due to whose patronage it thrives. If salimabad hat is a new hat, it comes within the mischief of law. Instead Salimabad hat was allowed to sit on some other day but not Tuesday and Friday. Here is the inconsistency.

Durga Chowdhurani V. Jawahir Sigh 17 Indian Appeals 122 (P.C.) Ramappa V Bojjappa, AIR 1963 (SC) 1633; Volakrishna Udayar V. Vasuadeva Aiyar, 22. CWN. 50 (PC). Venkatagari V. H.R.E. Board; Madras AIR 1949 (PC) 156 ; Batuk V. Surat. Municipality, AIR 1953 Bom. 133, Northamber and All ER, 152 KB 338 relied. Province of East Pakistan V. Hajee Md. Zaman PLD 1960 Kar 908; Kalicharan Das & Ors. V. Tamiruddin 10 DLR 523 distinguished

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42. ABDUL MUJIB CHOWDHURY vs. SYED ABDUL MUTALIB and OTHERS (05.06.1981 - BDHC) Add to session list

AIR 1957 Pat 700; Syed Ali Mridha v. Hamida Khatoon & others 26 **D.L.R.** 279; referred the Additional Court of the Munsif the suit was re-numbered as Title Suit No. **74** of 1965

CaseNote: (a) Suit ending on Compromise decree - Decree holder taking delivery of possession by levying execution of the Compromise decree--Decreeholder taking delivery of possession of more land than entitled--Remedy of judgment debtor lies in filing application u/s 47 C.P. Code and not a separate suit for partition--Code of Civil Procedure (V of 1908), s.47

Amiruddin v. Mr. Khairi & another, AIR 1928 Lah 936; Rajendra Prasad & others v. Goni Prakosh Pandey & others. : AIR 1957 Pat 700; Syed Ali Mridha v. Hamida Khatoon & others 26 D.L.R. 279; referred.

(b) Estoppel--Series of litigations between the parties ultimately concluded by a compromise decree--Defendant gave up his claim of Tk. 1000/- as a consdiration for compromise--Subsequent suit which in effect is directed against that compromise is hit by the principle of estoppel--Evidence Act (I of 1872), s. 115

43. ABDUL WASAYA CHOWDHURY vs. ELECTION COMMISSION and ORS. (27.11.1988 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Election Commission of Bangladesh and others XXVII **DLR** (1975) 663 distinguished; Haji Md Ishaque Mia @ Ishaque Mia V. Haji

CaseNote: Election matter - Whether re-election ought to have been held when ballots were not counted on the spot but it was done at a different place--Facts indicate that the Presiding Officer did not consider it safe and secure to count the votes at the centre where election was held--To maintain sanctity of the election and ensure security and safety of the presiding Officer and others votes were counted at a different place--The action of the Presiding Officer appears to be justified and no illegality has been committed--Union Parishad (Election) Rules. 1983 rs. 38 & 40--Constitution of Bangladesh, 1972 Art. 102.

Md. Imamuddin Sarkar V. The Election Commission of Bangladesh and others XXVII DLR (1975) 663 distinguished; Haji Md. Ishaque Mia @ Ishaque Mia V. Haji Sultan Ahmed and another 1987 BLD(AD) 179 relied

44. AFB Jahan Mia (Md.) vs. Chairman, National Board of Revenue and others (08.12.1996 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No 21 of 1993 Hon'ble Judges/Coram: A.T.M. Afzal, C.J., Mustafa Kamal, Latifur Rahman, Mohammad Abdur Rouf

CaseNote: Service - Seniority - Counting of - Present appeal by leave is from judgment and order of Administrative Appellate Tribunal allowing appeal and setting aside judgment and order passed by Administrative Tribunal allowing appellant's application in part, directing respondents to reckon appellant's period of service from impugned date for purpose of counting his seniority - Whether judgment and order of Administrative Appellate Tribunal need interference - Held, from 1-7-77, appellant remains absorbed in post different in grade and scale of pay from post of Upper Division Assistant - No assistance from Establishment Division Memo, can appellant in any way be permitted to count his previous service for fixation of his seniority - No interference called for - Petition dismissed. [15]

45. ANIL KUMAR SARKA and ORS. vs. SREE KALIMATA BIGRAHA (14.04.1983 - BDHC) Add to session list

Province of East Pakistan v. Kshiti Dhar Roy and 3 others 16 **D.L.R.** (S.C.) 457; Sm probated the same in Probate Case No. **74** of 1964 from the District Delegate, Manikganj and

CaseNote: Locus standi of a worshipper to file a suit to protect debuttar property - A suit for declaration of title and possession of such a property from a person who is in possession thereof under a void alienation being in the nature of enforcement of a private right by the idol and not being for any one of the reliefs found in section 92 of the C.P.C. falls outside its purview and is not barred--When such an alienation has been effected by the shebait acting adversely to the interests of the idol, even a worshipper can file the suit--Code of Civil Procedure (V of 1908) s. 92

Biswanath and another V. Sri Thakur Radha Ballabhji; AIR 1967 (SC) 1044 relied

Cited in DB

46. ASHUTOSH CHAKMA AND OTHERS vs. RAJDHANI UNNAYAN KARTRIPAKHA (RAJUK) AND OTHERS (06.06.2007 - BDHC) Add to session list

Bank v. Zafar Ahmed Chowdhury and another 56 **DLR** (AD) (2004) 175; Acqua Food Limited v of Imports and Exports and others 49 **DLR** (1997) 498; Dr. Kanak Kanti Barua v. BSMMU 11 BLC

CaseNote: Petitioners have legitimate expectation to be regularized in permanent posts in RAJUK.

After having served in Rajuk for about 10 years on Muster Rolled and thereafter on work Charged basis, the petitioners have a legitimate expectation for being regularized in permanent posts as per consistent practice of Rajuk. Sudden discharge from service appear to be unfair and unreasonable.

Rajuk as a statutory body must act within the discretion conferred by the Statute. Ministry has power to issue directions and guidelines for RAJUK to carry out its functions but said directions are to be treated as guidelines only.

According to section 3 of the Town Improvement Act, 1953 Rajuk is a statutory body. It is a body corporate and can sue and be sued in its own name. A statutory authority may be responsible to a Ministry of the Government but it cannot be directly controlled by the said Ministry. The Government through the concerned Ministry lays down the policy guidelines but a statutory body must act as per its discretion and power vested by the statute for implementing the policies of the Government. Government may give directions to Rajuk but such direction must be for ensuring that Rajuk's activities conform to purposes of the Act

Cited in DB

47. ATM Nazimullah Chowdhury vs. State and Another (01.08.2013 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Criminal Appeal No. 3735 of 2010 Appellants: ATM Nazimullah Chowdhury Vs. Respondent: State and Another

CaseNote: Criminal - Conviction - Section 409 of Penal Code, 1860, Section 5 (2) of Prevention of Corruption Act, 1947 - By impugned judgment and order, Trial Court convicted Appellant under section 409 of Code, 1860 - Hence, present appeal - Whether appeal deserves to be allowed - Held, conviction of accused both under section 409 of Code, 1860 and under section 5 (2) of Act, 1947 are legally justified - However, accused cannot be punished twice under relevant provisions of those two enactments - Thus, Appellant-accused is guilty under section 409 of Code, 1860 as well as under section 5(2) of Act, 1947 - However, ends of justice will be sufficiently met if Appellant-accused is sentenced to 3 years rigorous imprisonment and fine of Taka 6,84,699 - Therefore, impugned judgment and order stands modified accordingly - Appeal deserves to be dismissed - Appeal dismissed. [82], [83]

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48. Abdul Awal Mia vs. Sonali Bank and Ors. (28.05.1990 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Appeal From Original Decree No. 222 against the judgment and decree dated 8.2.**74** passed by the learned Subordinate Judge, 1st

CaseNote: Civil - Realisation of money - Order 1 rule 10 of Civil Procedure Code, 1908 - Appeal against judgment and decree decreeing suit on contest with cost against defendant Nos. 1 and 3 - Whether impugned judgment and decree suffers illegality or not? - Held, plaintiff claimed that only defendant No. 1 and not defendant No. 3 was responsible for alleged defalcation - No relief whatsoever prayed for by plaintiff against added defendant No. 3 nor any allegation of defalcation made against added defendant - After addition of defendant No. 3 as party in suit plaintiff did not amend plaint as required under Order 1 rule 10 sub-rule (4) of Code making any allegation against added defendant No. 3 as to defalcation -Determination of question of fact namely, defalcation of amount parties should not be allowed to lead evidence against added defendant No. 3 - Defendant No. 3 not responsible or liable for alleged defalcation - In absence of pleadings against added defendant No. 3 Subordinate Judge cannot allow parties to lead evidence in absence of pleading against added defendant No. 3 - Subordinate Judge has obviously erred in allowing parties to lead evidence against added defendant No. 3 - Therefore decree passed against added defendant No. 3 not sustainable - Prayer in plaint cannot override provision of Order 1, rule 10, sub-rule (5) of Code - Judgment and decree suffer from error and illegality - Appeal allowed - Judgment and decree set aside - Suit dismissed. [11], [12], [13]

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49. Abdul Awal vs. Government of the People's Republic of Bangladesh and Ors. (01.12.2016 - BDHC) Add to session list

demanding an amount of surcharge of Taka 7,**74**,337 in the name of arrear taxes for the as the DCT) imposed surcharge of Taka 7,**74**,337 upon the petitioner and issued a demand

CaseNote: Direct Taxation - Ultra Vires - Articles 26(2), 27 and 31 of Constitution of the People's Republic of Bangladeshand Section 61 read with 2nd part of schedule-3 of Finance Act, 2011 - Petitioner had challenged provision of surcharge at rate of 10% on income tax of person having net wealth worth over Taka 2crore imposed by section 61 read with 2nd part of schedule-3 of Act so far as it relates to assessment year 2011-2012 should not be declared ultra vires Constitution being violative of provisions of articles 26(2), 27 and 31 of Constitution, Petitioner also challenged demand notice issued by Respondent no. 4 demanding amount of surcharge of Taka 7,74,337 in name of arrear taxes for assessment year 2011-2012 - Whether provision of surcharge as imposed by section 61 read with 2nd Part of Schedule-3 of Act, was ultra vires to Constitution - Held, from judgment of full bench of court, it was evident that it had already been decided by full bench of division that provision of surcharge as imposed by Act was not ultra vires Constitution - View taken in said decision was squarely applicable in facts and circumstances of Rule - Therefore, court was of view that provision of surcharge as imposed by section 61 read with 2nd Part of Schedule-3 of Act, was not ultra vires Constitution - Further, since provision relating to imposing surcharge was intra vires Constitution, imposition of surcharge by DCT and issuing demand notice against Petitioner could not be said to be unlawful - Thus, court find no merit in Rule - Rule discharged. [18],[19],[20]

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50. Abdul Aziz and Ors. vs. Kabir Ahmed Patwary and Ors. (02.04.2006 - BDHC) Add to session list

N THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 1740 of 2001 Hon'ble Judges/Coram: Siddiqur Rahman Miah and Md Ismail and Shihab Uddin Mahmood, Advocates

CaseNote: Property - Redemption of Land - Whether dismissal of suit for declaration that order passed by opposite party No. 5 affirming order of redemption of suit land was legal? - Held, it appeared that plaintiffs filed 12 criminal cases against contesting defendants/opposite parties immediately after purchasing alleged suit land which clearly indicates that plaintiffs were aware of proceedings going on in revenue course - But their contention that they knew about proceedings only on relevant date is not correct and thus, they failed to file suit within stipulated time and, as such, their suit is barred by limitation - On other hand, contention of petitioners is that their sale was a complete usufructuary mortgage and petitioners A and B transferred suit land to B who with evil intention transferred suit land to L subject to condition of re-purchase - There was no specific period of re-conveyance, that thereafter defendants/petitioners began to run after B and L to get back land by way of re-conveyance and finding no other alternative, they filed Miscellaneous Case under provisions of President's Order and that opposite party No. 6 i.e. L preferred SA petition against aforesaid order before Add. Deputy Commissioner who was eventually pleased to affirm impugned order - Opposite party No. 6 preferred Miscellaneous Appeal against aforesaid order of redemption which was also dismissed - In view of fact and circumstances of case discussed above, this court is of view that suit was not maintainable and

same is also barred by principle of res judicata and that transaction of relevant date was never dead, past and closed before aforesaid orders of President's Order came into force being based on misconception of fact and law - Turning to judgment of reversal, this court is of view that lower appellate court has failed to grasp facts of case and law bearing with it - He totally failed to assess and evaluate facts as well as evidence on record which led him to reverse findings of trial Court - In facts of case, this court have no hesitation to find that appellate Court wrongly applied his judicial mind and illegally dismissed appeal assigning no good reason - Thus, this court find illegality and material irregularity in this impugned judgment and decree occasioning failure of justice to justify interference by this court exercising revisional jurisdiction under Section 115(1) of CPC in this revision - This court find merit in this Rule - In result, Rule is made absolute without any order as to cost and impugned judgment and decree passed in Title Appeal by District Judge allowing appeal and setting aside judgment and decree passed by trial court dismissing suit and setting aside order of redemption passed by Add. Divisional Commissioner is set aside - Order of redemption passed by Add. Divisional Commissioner is affirmed. [39],[40],[41], [42],[43],[44], [45],[46],[47]

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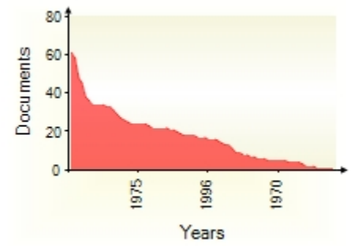
Timeline



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Judge
A.B.M. Khairul Haque (23)
A.F.M. Abdur Rahman (13)

Keywords
Absence (510)
Accused (413)

Display in Results : Excerpt CaseNote

51. Abdul Aziz and Ors. vs. Ministry of Communication and Ors. (04.05.2010 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 4856 of 2009 Hon'ble Judges/Coram: Hasan Foez Siddique and Md Acts/Rules/Orders: Constitution Of The

CaseNote: Constitution - Writ of mandamus - Articles 27 and 29 of Constitutionof People's republic of Bangladesh, 1972 - Application sought to direct respondent to absorb petitioners in vacant posts of Revenue budget and make their job permanent by implementing agreements - Whether issue of writ of mandamus can be granted in favour of petitioner? - Held, authorities in writing made promise that service of temporary employees of Railway should be absorbed in revenue budget - Respondents given effect of that promise absorbing 344 persons in revenue budget - But in case of petitioners they refrained themselves to absorb them which is arbitrary action on behalf of respondents - Articles 27 and 29 of Constitution created obstruction of taking any action arbitrary and ensure fairness and equal treatment - Denying to absorb/regularize service of petitioners like 344 others respondents, in fact have ignored equality clause of constitution -Written promise to absorb service of petitioners in revenue budget - Ignoring that promise respondents issued fresh notice inviting applications for appointment afresh which cannot be encouraged - Rule made absolute. [13]

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52. Abdul Barkat Mollah Shamsud Doulah vs. Artha Rin Adalat and Ors. (16.06.2016 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 9952 of 2014 Hon'ble Judges/Coram: Shamim Hasnain and Mohammad Ullah, JJ At the time of issuance of the

CaseNote: Civil - Maintainability of execution suit - Section 28 of Artha Rin Adalat Ain, 2003 - Present Rule issued upon respondents to show cause as to why the proceedings in Artha Execution Case should not be declared to be without lawful authority and of no legal effect - Whether suit is maintainable - Held, from a close reading of Section 28 of the Ain, it appears that sub-section (1) of section 28 has imposed a restriction on decree-holder that execution case shall have to be filed within l year from date of passing a decree subject to the provision of section 29 of the Ain - Sub-section (3) there of speaks about filing of second or subsequent execution case fixing a time limit of 1 year from the date of rejection or disposal of the first execution case - Sub-section (4) creates an embargo upon decree-holder providing legal consequence that new execution case shall be rejected summarily if it is filed after expiry of the period of 6 years from date of filing of the first execution case - In instant case, execution case was filed on 08.03.2004 pursuant to judgment and decree dated 02.11.2003 - At one stage of proceedings execution case was dismissed for default on 19.06.2011 i.e. after expiry of 6 years - Having considered an application for restoration, at instance of decree-holder bank, it was restored by order dated 05.07.2011 on taking recourse of section 57 of the Ain - When statute prescribes special provision of limitation for filing a new Artha Rin Execution Case after rejection or disposal of first one, taking shelter of inherent jurisdiction under section 57 of Ain for restoration of same, it will defeat the whole purpose of special law of limitation as contemplated in the statute - Therefore, considering facts and circumstances of case and related special law of limitation, restoration of execution case under section 57 of Ain should be declared to have been done without lawful authority - Moreover, inherent power of court cannot be invoked to enable the Court to break through the clear provision of law of limitation - Similarly, inherent jurisdiction cannot be exercised so as to conflict with a statute or statutory provision framed for a particular purpose - In the instant case, when filing of new execution case under statutory provision of section 28(4) had been barred by special law of limitation, decree-holder taking technical resort achieved the goal which is not allowed under the law - Right of decree-holder in accordance with statute has apparently extinguished as a legal consequence of special provision of limitation incorporated therein - Thus, pending suit is not maintainable - Rule, therefore, succeeds and made absolute. [8]

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53. Abdul Gafur Chowdhury vs. Abul Hashem Khan (17.07.1984 - BDHC) Add to session list

of the Opposite party was executed on 29.6.**74** prior to the institution of the suit and as In 27 **D.L.R.** 441 it has been held "it is true that if registration has taken effect the

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54. Abdul Goni Kha vs. Md. Abdul Aziz Azizur Rahman and ors. (27.08.1996 - BDHC) Add to session list

passed orders of redemption on 28-7-73, 13-3-**74** and 12-3-**74** respectively but Nazar Ali and his heirs

Cited in DB

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55. Abdul Hakim Gazi (Md.) vs. Government of the People's Republic of Bangladesh and Ors. (09.11.2020 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 14652 of 2016 of the land in question on 14-8-2001 in VP Lease Case No. 51, 52, 53, 63, 64/**74**-75

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56. Abdul Hakim and Ors. vs. State (05.05.2002 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Abdul Quddus and Bazlur Rahman, JJ Counsels: For Appellant/Petitioner/Plaintiff: Md Acts/Rules/Orders: Code of Criminal

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57. Abdul Hakim vs. Government of Bangladesh and Ors. (03.10.2013 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH in particular, of the Appellate Division reported in 48 **DLR** (AD)121, 60 **DLR** (AD)12, 17 **DLR** (SC) **74** has submitted that it is a given that judicial

CaseNote: The Impugned Order being issued by the Chairman, Managing Committee of the Madrasah does indeed operate in the public domain both in the derivative and the functional sense to affect the rights and interests of the Petitioner through unlawful intervention without legal sanction and results in a scenario that is clearly envisaged in both Article 102(1) and Article 102(2) of the Constitution making the Petitioner's grievances in this Writ Petition amenable to judicial review by invocation of the said Article.

The purpose of the enquiry made of the Amici Curiae has been to ascertain the extent of judicial reviewability of actions and decisions of ostensible private bodies but which nevertheless operate in the public domain. Mr. Mahmudul Islam, relying upon the decisions, in particular, of the Appellate Division reported in 48 DLR (AD)121, 60 DLR (AD)12, 17 DLR (SC) 74 has submitted that it is a given that judicial review of an act of a private entity which is neither a statutory nor a local authority is not permissible under the Constitution. Proceeding on that premise, for his part Mr. Rokanuddin Mahmud has delved deeper into the forays made by Courts in various jurisdictions to chip away at that basic tenet so introduced by Mr. Islam. [4]

Indeed, under our Constitutional scheme an aggrieved person, in order to agitate his claim and case in judicial review, can do so by invoking Article 102(1) and/or (2) depending on the nature of the grievance as well as of status of the perpetrator. [9]

Article 102(1) comes into play in relation to the infringement of any fundamental right guaranteed under Part III of the Constitution. Article 102(2) presupposes the availability of the various Writs that may be appealed to for reviewing actions and operations in the public domain, such actions being otherwise the preserve of the Executive organ of the State affecting the citizenry in their contacts and dealings with the Executive and its functionaries. [10]

Article 102(1) and (2)(a) (ii) (as envisages a Writ of Certiorari) for our purpose relevantly read thus:

"Article 102. Power of High Court Division to issue certain orders directions etc. (1) The High Court Division on the application of any person aggrieved may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution.

(2) the High Court Division may, if satisfied that no other equally efficacious remedy is provided by law-

(a) on the application of any person aggrieved, make an order-

...

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect. " [11]

Article 102(1) sets itself apart from Article 102(2) (a) (ii) by bringing within its purview a wider group of individuals and authority on whom the Court may on judicial review hold sway. When issues of fundamental rights are raised, the sanction under Article 102(1) is clearly of availability of redress against "anyone,'" or "any authority", inclusive of "any person performing any function in connection with the affairs of the Republic." The reference to government functionaries must accordingly, be seen as an appendage made to the broader category of "anyone " or "any authority" by way of abundant caution. [12]

That appendage in Article 102 (1) appears in a similar avatar taking centre stage in a Writ of Certiorari under Article 102 (a) (ii), when fundamental rights aside the focus is on the legality or not per se of an action or decision emanating from any "person performing functions in connection with the affairs of the Republic or of a local authority...." (Emphasis added by this

Court). [13]

The emerging judicial consensus in this jurisdiction as noted earlier is that Article 102(a) (ii) allows for identifying amenability to judicial review not exclusively by reference to an obvious derivative public status of a person but increasingly by the public domain within which it operates and prevails irrespective of its derivative status. The ever increasing reality of public-private partnership of providing services to the public at large and in regulating public activity has blurred the traditionally held view that a Writ in Certiorari, in particular, under Article 102(2) can only validly be addressed to public functionaries. This traditional view indeed risks being exposed as fallacious as it belies the fact that public functionaries in the strictest sense have in reality long forsaken their perceived monopoly over public affairs and that private and public enterprise and endeavour are inextricably intertwined in the conduct of business of the Republic or of a local authority. [14]

In the unreported judgment in R. vs. The London Metal Exchange ex p. Albatros Warehousing BV of 303.2000, Mr. Justice Richards considered the issue of what constitutes a public function. In doing so, he referred to the Datafin Case, as well as the judgment in R vs. Disciplinary Committee of the Jockey Club, ex parte Aga Khan reported in [1993] 1 WLR 909, and R v. Lloyd's of London, ex parte Briggs reported in [1993] 1 Lloyd's Rep 176. Mr. Justice Richards in doing so premised his enquiry on the need to make a broad assessment of all circumstances of a case and, in particular, on the extent to which "the powers can he said to be woven into a system of governmental control" Referring first to the Datafin Judgment Mr. Justice Richards cited the oft-quoted observation of Lloyd LJ thus:

"Of course the source of the power will often, perhaps usually, be decisive, If the source of the power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review. If at the other end of the scale, the source of power is contractual, as in the case of a private arbitration, then clearly the arbitrator is not subject to judicial review.

But in between these extremes there is an area in which it is helpful to look not just at the source of the power but at the nature of the power. If the body in question is exercising public law functions, or if the exercise of its functions have public law consequences, then that may be sufficient to bring the body within the reach of judicial review. It may be said that to refer to 'public law' in this context is to beg the question. But I do not think it does. The essential distinction, which runs through all the cases to which we were referred, is between a domestic or private tribunal on the one hand and a body of persons who are under some public duty on the other. "(Emphasis added by this Court). [18]

The decision in R vs. Disciplinary Committee of the Jockey Club, ex parte Aga Khan reported in [1993] 1 WLR 909, was taken note of in Albatros Warehousing BV in the context of Sir Thomas Bingham's observation in Aga Khan that the effect of the decision in Datafin was "to extend judicial review to a body whose birth and constitution owed nothing to any exercise of governmental power but which had been woven into the fabric of public regulation... "(Emphasis added by this Court), This concept of the function of the any public body being "woven into any system of governmental control" (Emphasis added by this Court) as highlighted by Sir Thomas Bingham in ex parte Aga Khan would eventually find further elaboration in Poplar Housing Association vs. Donoghue (2006) as will be discussed below. [19]

This Court notes that "The Province of Administrative law", being a compilation of essays, dwells on the phenomenon of the expanding frontier of Administrative Law through judicial activism in various jurisdictions as the UK, and US, Canada, Australia and New Zealand. As one review of this book reads aptly in almost mirroring the observation in Datafin:

"During the past decade, administrative law has experienced remarkable development. It has consistently been one of the most dynamic and potent areas of legal innovation and of judicial activism. It has expanded its reach into an ever broadening sphere of public and private activities. Largely through the mechanism of judicial review, the judges in several jurisdictions have extended the ambit of the traditional remedies, partly in response to a perceived need to fill an accountability vacuum created by the privatization of public enterprises, the contracting-out of public services, and the deregulation of industry and commerce. The essays in this volume focus upon these and other shifts in administrative law." [22]

Upon a substantive consideration of the Rule delving into the merit of this case it is evident that the Impugned Order presupposes a decision of the Committee concerning the dismissal of the Petitioner and predicated on which the Impugned Order appears to have been issued. No documents on record are, however, found attesting to such a decision being made by such Committee or indeed significantly of the final endorsement of that Committee's decision by the Board itself. [35]

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58. Abdul Hamid Shaikh vs. Sree Sree Ram Krishna Dev and ors. (18.07.1993 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION FMA No. 131 of 1991 (Dhaka) and Cases being No. 528/73-**74** and 527/73-**74** before the CO (Dev) for setting aside the auction

CaseNote: Civil - Declaration - Possession - Injunction - Appeal at instance of Defendant-Appellant was directed against judgment and order passed by lower appellate court reversing judgment and decree passed by trial court and sending suit back on remand to trial court for fresh hearing and disposal in light of observations made in body of impugned judgment - Whether judgement and order passed by lower appellate court liable to be interfered by court in appeal - Held, court have carefully read both judgments and provisions of law and decisions cited vis-a-vis facts and circumstances of case and court was of view that trial court wrongly decided question of maintainability of suit without framing proper issues and allowing parties to lead evidence and lower appellate court in appeal had rightly set aside disputed judgment and decree of trial court and sent suit back on remand totrial court for regular trial of suit on merit after allowing some amendment of schedule of land by Plaintiff framing proper issues and further evidence if any from both sides in accordance with law - Court, therefore find no illegality in impugned judgment and order of lower appellate court passed in appeal and same did not call for any interference by court - Appeal dismissed. [17],[18]

Cited in DB

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59. Abdul Hamid vs. Aminul Islam Chowdhury and Ors. (21.05.2007 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 157 of 1996 Appellants: Abdul Hamid Vs. Respondent: Aminul Islam Chowdhury and Ors

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60. Abdul Hannan and Ors. vs. Government of East Pakistan and Ors. (20.02.1958 - HCDK) Add to session list

on searching him, discovered from inside his bedding **74** tolas of gold in a leather handbag Abdul Hannan was found in possession of **74** tolas of gold within the 5-mile-belt of the

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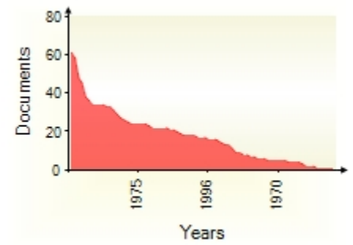
Timeline



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Accused (413)

Display in Results : Excerpt CaseNote

61. Abdul Huq vs. The Oriental Bank Ltd. and Ors. (17.06.2012 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION First Appeal No. 269 of 2011 73, Registration Act, 1908 - Section **74**, Registration Act, 1908 - Section 77; Specific

CaseNote: Property - Sale deed - Suit for specific performance of - Present appeal directed against judgment and decree dismissing title suit thereby refusing to register deed of suit for specific performance of contract - Whether judgment and decree dismissing title suit need interference - Held, execution of subject contract has been done - Consideration money has been paid - No fraud has been committed - Plaintiff proved his case - Only registration of Kabala requires to be done - Plaintiff successfully made out case of actual performance of contract - It has all essential of contract valid - Judgment and order dismissing title suit set aside - Appeal allowed. [20]

62. Abdul Hye (Md.) vs. Government of Bangladesh and Ors. (23.11.2017 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 8932 of 2011 Hon'ble Judges/Coram: Obaidul Hassan and Krishna Debnath, JJ Imtiaz Farooq and M. Syed Ahmed

CaseNote: Property - Vested property - Listing of - Present rules issued calling upon the respondents to show cause as to why promulgation of Enemy Property (Continuance of Emergency Provisions) (Repeal) Amendment Ordinance 1976, and all actions taken pursuant to said Ordinance; and actions taken pursuant to it; and inclusion of new properties as enemy property, should not be declared to have been enacted without lawful authority - Whether case made out for grant of relief as prayed - Held, all actions, decisions regarding listing any property within territory of Bangladesh as enemy property or vested property after 23.03.1974 are illegal - Persons engaged with task of listing property as vested property after 23.03.1974 are liable to be held responsible for doing illegal works - Persons who were/are engaged in listing properties as vested property subsequent to 18.06.1980 liable to be proceeded with for contempt of Court - Rules disposed of. [138]

Cited in DB

63. Abdul Jabbar @ M.A. Jabbar vs. The State (22.05.1983 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION) (Dhaka Criminal Appeal No. 252 of 1977 Appellants: Abdul Jabbar @ M.A. Jabbar Vs. Respondent: The State

CaseNote: Criminal - Bribe - Section 161 of Penal Code,1860 and Section 5(2) of Prevention of Corruption Act, 1947 (Act, 1947) - Appeal against judgment and order of conviction under Section 161 of Penal Code and Section 5(2) of Act, 1947 - Whether disinterested and independent witnesses have corroborated story of acceptance as well as recovery of marked notes as bribe money immediately after occurrence? - Held, decoy witnessand police witnesses had animus against accused has not been made probable in facts and circumstances of case -Not convincing that prosecution witness acted as intermediary in talk of marriage of daughter of accused - Nor has it been made probable by any satisfactory evidence on record that prosecution witness in course of obtaining Income-Tax Clearance Certificate from accused developed animus against him as he delayed in issuing certificates -Alternative story that accused went to bathroom and on return found money on his table, has also not become probable during cross-examination of prosecution witnesses - Prosecution failed to prove case beyond reasonable doubt - No independent and disinterested witness come to support prosecution story in material particulars, namely, fact of acceptance and recovery of bribe money -Two allegedly independent witnesses who have been examined have either been found to be not independent at all or have not supported prosecution story - Therefore, although strong suspicion exists regarding conduct of accused, yet in view of circumstances stated above, accused enjoys benefit of doubt -Appropriate authority not debarred from proceeding departmentally against accused -Appeal allowed -Order of conviction and sentence passed against accused set aside. [23], [24]

64. Abdul Jabbar @ M.A. Jahbar vs. The State (22.05.1983 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION) (Dhaka Criminal Appeal No. 252 of 1977 Appellants: Abdul Jabbar @ M.A. Jahbar Vs. Respondent: The State

CaseNote: Criminal - Conviction - Bribe - Section 61 of Penal Code, 1860 and Section 5(2) of Prevention of Corruption Act, 1947 - Appeal against judgment and order convicting appellant under Section 61 of Penal Code and Section 5(2) of Act, 1947 - Whether lower court rightly convicted appellant under Section 61 of Penal Code and Section 5(2) of Act, 1947? - Held, defence case that decoy witness and police witnesses had animus against accused has not been made probable in facts and circumstances of case -Not convincing that prosecution witness acted as intermediary in talk of marriage of daughter of accused - Nor has it been made probable by any satisfactory evidence on record that prosecution witnesses, in course of obtaining Income-Tax Clearance Certificates from accused developed animus against him as be delayed in issuing certificates -Alternative story, namely, that accused went to bathroom and on return found money on his table, has also not become probable - Prosecution failed to prove case against accused beyond reasonable doubt - No independent and disinterested witness come to support prosecution story in its most material particulars, namely, fact of acceptance and recovery of bribe money -Two allegedly in-dependent witnesses who have been examined, have either been found to be not independent at all or have not supported prosecution story - Therefore, although strong suspicion exists regarding conduct of appellant, yet in view of circumstances stated above, we give appellant benefit of doubt -Acquittal should not be construed to be honourable acquittal - Appropriate authority not debarred from proceeding departmentally against appellant in spite of this judgment -Appeal allowed -Order of conviction and sentence set aside. [26], [27]

Cited in DB

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65. Abdul Jabbar vs. State (27.10.1983 - BDHC) Add to session list

case in short was that on 7.5.**74** at about 11-30 A.M. the accused petitioner along with two has referred to the case of Fani Bhusan Halder Vs. The State reported in 27 **D.L.R.** 254

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66. Abdul Kader Talukdar vs. State (11.04.1968 - HEPK) Add to session list

Criminal Appeal No. **74** of 1966 Appellants: Abdul Kader Talukdar Vs. Respondent: State for the appellant has cited the case of Ansar Ali Mia vs. The State (1961) 13 **DLR** 162

Cited in DB

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67. Abdul Karim (Md.) vs. Government of Bangladesh and Ors. (11.03.1997 - BDHC) Add to session list

filed the Miscellaneous Case No. 236T/73-**74** under section 54 of the State Acquisition and and the revenue officer by order dated 28-7-**74** mutated the name of the plaintiff in the

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68. Abdul Karim Farazi vs. Ruhul Amin Shaikh and Ors. (18.08.2015 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 5088 of 2003 Counsels: For Appellant/Petitioner/Plaintiff: Sadananda Rana, Advocate

CaseNote: Property - Title and Partition - Order XIII Rule 4(1) of Code of Civil Procedure, 1908 CPC - Whether appellate court is error in reversing finding of trial court that plaintiff's suit is bad for defect of parties? - Held, it appears that trial Court on consideration of evidence found that suit is bad for defect of parties - Trial court on consideration of document categorically found that A was R.S recorded tenant and main party in present suit and co-share in suit land but without impleading A, present suit for partition was bad - In a partition suit, established principle of law is that all co-sharer should be impleaded and failure implead any co-sharer render suit liable for dismissal on ground of maintainability - It appears that specific findings of trial court have not been reversed by lower appellate court exercising its power under Order XLI Rule 31 of CPC - Trial court having considered of materials on record rightly dismissed suit with some specific findings which have not been reversed by court of appeal below which is not a proper judgment of reversal, appellate court thus committed error of law in reversing judgment of trial court - It is a settled principle of law that lower appellate court being final court of fact will have to discuss and reassess evidence on record independently while either reversing or affirming finding of trial court - In case of reversal it is more incumbent upon appellate court to reassess evidence on record and to arrive at his own independent finding - It appears that in present case plaintiffs did not take any steps to prove their title in suit land, as such plaintiffs are not entitled to get a decree of partition where they failed to prove their title in possession in suit land as co-hearer in suit land - It is that appellate court without considering evidence abruptly came to a finding that plaintiffs had right, title and interest in certain part of suit land but decreed suit only relevant area - Thus it is apparent that appellate court failed to apply judicial mind in passing decree in favor of plaintiffs - In aforesaid promises, this court set aside judgment and decree of lower appellate court and restored those of trial Court - In result, rule is made absolute without any order as to cost. [11],[12],[13], [14],[15],[16], [17]

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69. Abdul Khaleque Sarnamat vs. Abdul Khaleque Sarnamat and ano (23.05.1995 - BDAD) Add to session list

Bangladesh Vs. Haji Abdul Gani Biswas, 32 **DLR** (AD) 233; Abu Bakkar Vs. Nazir Ahmed, 34 **DLR** (AD) 237--Cited

CaseNote: State Acquisition and Tenancy Act, 1950 (XXVIII of 1951)

Section - 95A

Treatment of certain transaction as Usufructuary Mortgage

To attract the application of Section 95A of the Act the transaction in question must be a subsisting one on the date of promulgation of President's Order No. 88 of 1972 on 3.8.1972. Transactions which were not alive on that date are to be treated as transactions past and closed.

In the present case, admittedly the mortgage was for 4 years which expired long before 3.8.1972 and as such Section 95A of the Act will have no application to such a transaction which was past and closed.

Bangladesh Vs. Haji Abdul Gani Biswas, 32 DLR (AD) 233; Abu Bakkar Vs. Nazir Ahmed, 34 DLR (AD) 237--Cited

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70. Abdul Latif Khan vs. Province of East Pakistan and others (13.08.1968 - HEPK) Add to session list

Appellants: Abdul Latif Khan Vs. Respondent: Province of two other Division Benches of this Court (19 **D.L.R.** 469 and 19 **D.L.R.** 761) wherein it was held that the provisions of

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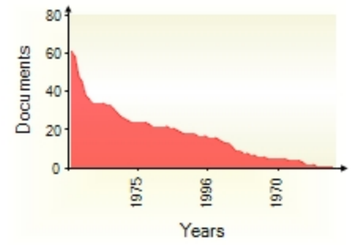

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A.F.M. Abdur Rahman (13)

Keywords
Absence (510)
Accused (413)

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71. Abdul Latif Mirza vs. Govt. of Bangladesh and other (02.09.1977 - BDAD) Add to session list

of Pabna by his order dated 22-4-**74**, under section 3 of the Special Powers Act detained fact that he was in continuous detention from 22-4-**74**, though there was a gap of two days

CaseNote: Criminal - Detention - Legality of - Section 3 of Special Powers Act, 1958 (SPA) - Present appeal filed to challenge judgement and order passed in writ petition filed to challenge impugned order of detention made under Section 3 of SPA - Whether High Court Division justified in dismissing writ petition filed to challenge order of detention - Held, order of detention made in instant case different from one under sub-section (3) of Section 3 of SPA - Government merely approves order made by Magistrate under sub-section (2) of Section 3 of SPA - Initial detention is continued - Order made by Government was under sub-section (1) of Section 3 of SPA are not under sub-section (3) of Section 3 of SPA - Impugned order not invalid since initial detention was invalid - Appeal allowed. [67], [68]

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72. Abdul Latif and anr. vs. Attar Ali (24.06.1989 - BDHC) Add to session list

in the case of Abdul Hafiz and others Vs. Mafizuddin and others reported in 7 **D.L.R.** 577 in the case of Sadindee Dev Vs. Ambica Singh Manipuri and others reported in 25 **DLR** 327

CaseNote: Civil - Easement right - Appeal against judgment and decree decreeing plaintiffs'suit for right to easement over suit land - Whether there was enjoyment of prescriptive right for statutory period and easement claimed by plaintiff is casement of necessity? - Held, prosecution witness says that pathway in question is only passage which connects to main road - He has no other way to come out and enter into his house -Other prosecution witnesses also supported him by saying that said pathway is only pathway without any alternative passage - Pleader commissioner's report also shows that pathway in schedule II is only pathway for coming out and going in plaintiffs' house -Plaintiff proved that said pathway was in existence from time immemorial and used by his father and grand-father over twenty years -Easement as claimed by plaintiff is casement of necessity - Such necessity is absolute without which enjoyment of his house is not possible - Therefore easement claimed is apparent, continuous and absolute in terms of necessity - Thus, plaintiff has accessory right in pathway on ground of easement of necessity -Registered kabala of defendant shows reservation of pathway was intended by transferor when they parted with condition that pathway be kept undisturbed - Therefore defendant has no right to create obstacle or obstruct said pathway over which dominant owner has right - Judgment of court of appeal below have been concluded with concurrent findings of fact and no illegality appears to have been committed - Rule discharged.[15]

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73. Abdul Majid Akon vs. Satya Bhoma Nath and ors. (03.03.1980 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION) (Barisal by the learned Munsif by his order dated 2.6.**74** on the finding that case was not bad for It may be noted here that

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74. Abdul Majid and others vs. Serajuddin and others (18.02.1952 - HEPK) Add to session list

Appellants: Abdul Majid and others Vs. Respondent: Serajuddin and others Hon'ble Judges: Amin Ahmed and Guha, JJ The facts leading to this appeal arc follow: Jahiruddin Sarkar

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75. Abdul Malek vs. Abdur Rahman (15.08.1966 - HEPK) Add to session list

Civil Rule No. 80 of 1965 Appellants: Abdul Malek Vs. Respondent: Abdur Rahman of Huzzat Ali v. Imam Uddin Bepari (1961) is **DLR** 819 was cited on behalf of the transferee

Cited in DB

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76. Abdul Malik and ors. vs. State (19.04.1984 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Appellants: Monir Hossain @ Mointaya Vs. Respondent: State Hon'ble Judges/Coram: Fazlay Hossain Mohammad Habibur Rahman

Cited in DB

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77. Abdul Mannan Bhuiyan and Ors. vs. Nasir Hossain and Ors. (02.12.2012 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Petition for Leave to Appeal No. 1011 of 2010 Abdul Wahhab Miah, Nazmun Ara Sultana, Syed Mahmud Hossain and Muhammad

CaseNote: Present - Title - Suit for - Present civil petition filed seeking leave to appeal against judgment and order passed by High Court Division in civil revision affirming judgment and decree passed in title appeal reversing those passed in subject Title Suit - Whether judgment and order passed by High Court Division need interference - Held, High Court Division quoted salient findings of appellate Court - Rightly concluded that plaintiffs could not show that there was misreading or non-reading of material evidence by appellate Court - Impugned findings of High Court Division made on proper appreciation of laws and facts - Same do not call for interference by this Division - Petition dismissed. [11]

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78. Abdul Mannan Khan vs. Government of Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs and Others[Alongwith Civil Petition for Leave to Appeal No. 596 of 2005] (10.05.2012 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Muzammel Hossain, Surendra Kumar Sinha, Md Abdul Wahhab Miah, Nazmun Ara Sultana, Syed Mahmud Hossain and Muhammad Imman

CaseNote: Constitution - Amendment - Basic structure of - Present appeal calls for determination on whether Constitution (Thirteenth Amendment) Act, 1996 changed basic structures of Constitution - Whether Constitution (Thirteenth Amendment) Act, 1996 changed basic structures of Constitution - Held, Republican and Democratic character of Constitution was no more infringed after 13th Amendment - Non-Party Care-Taker Government system become unworkable due to improper exercise of power of President which led to unnatural and unconstitutional state of affairs in 2007 - To avoid recurrence of such situation, mode of setting up of interim Government is to be replaced by another system - It is fully within power of people to change system which will serve them and sustain their democratic rights - People make their will known by exercising their democratic right through their elected representatives in Parliament - Appeal disposed of. [1548]

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79. Abdul Mannan and Ors. vs. State (01.09.1987 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Criminal Appeal No. 110 of 1985 Hon'ble Judges/Coram: Abdul Bari Sarker and A.M. Mahmudur Rahman, JJ P.W. 1 then went to the

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80. Abdul Mazid and Ors. vs. The State (04.02.2013 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Hon'ble Judges/Coram: Moyeenul Islam Chowdhury and Kazi Md Counsels: For Appellant/Petitioner/Plaintiff: Md

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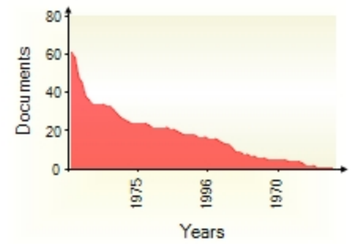

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Keywords
Absence (510)
Accused (413)

Display in Results : Excerpt CaseNote

81. Abdul Mohit and others vs. Social Investment Bank Ltd and others (03.11.2002 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Hon'ble Judges/Coram: Mohammad Fazlul Karim, Syed J.R. Mudassir Husain, Abu Sayeed Ahammed and Md

CaseNote: Company - Board of directors - Meeting of - Section 95 of Companies Act, 1994 - Present appeals by leave arose out of impugned judgment and order dismissing Company Matter holding same to be not maintainable in Company Court rejecting application for direction upon respondents to serve notice of Board meeting to appellants-Directors in compliance of Section 95 of Companies Act, 1994 -Whether impugned judgment and order dismissing Company Matter need interference - Held, Section 95 of Companies Act providing no forum thereunder - Any dispute arising thereto is to be resolved as civil dispute resorting to ordinary civil Court of competent jurisdiction - Inherent jurisdiction under Companies Act sans any specific provision would not be invoked to enforce Section 95 of Companies Act - Said provision is providing procedural matters only and not substitutive provision - Under Section 95 of Companies Act, High Court Division could not sit as Company Court under Companies Act - No interference called for - Appeal dismissed. [17]

82. Abdul Motaleb and ors. vs. The State (25.03.1975 - BDHC) Add to session list

in jail and is directed against the order passed by the sessions Judge, Dacca on 31.10.**74 74** the informant-opposite party filed an application before the learned sessions Judge for

CaseNote: Criminal - Cancellation of Bail - Sections 120B and 302 of Penal Code - Whether Sessions Judge has power to cancel bail earlier granted by another Sessions Judge? - Held, a Court, which is called upon to consider whether bail should or should not be granted to a person accused of an offence punishable with death or transportation for life, is duty bound to make up its mind, upon materials produced before it, as to whether there appear reasonable ground for believing that he has been guilty of that offence - A prima facie assessment has, therefore, of necessity, to be made of materials so produced - Sessions Judge had in opinion of this court acted in accordance with principles laid down by this Court in making such an assessment and High Court was clearly wrong in taking a different view - In this particular case petition filed by a private complainant on which impugned order was passed by Sessions Judge clearly show that accused persons being released on bail are threatening complainant petitioner and witnesses saying that men who will depose against accused shall be killed - This clearly shows that informant by this application drew notice of Sessions Judge with regard to certain important facts in matter of prosecution of this case under Section 302/120B of Penal Code - In this view of matter this court think that Sessions Judge arrived at right conclusion - Sessions Judge has power to cancel bail earlier granted by another Sessions Judge - In this view of matter application is dismissed and Rule is discharge. [4],[5]

Cited in DB

83. Abdul Muhit and others vs. Social Investment Bank Limited (SIBL) and others (11.12.2001 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Matter No. 78 of 2001 with Matter No No. 73 of 2001, Contempt Petition No. **74** of 2001, Contempt Petition No. 75 of 2001 and

CaseNote: Company - Board meeting - Sections 95, 197, 233 and 241 of Companies Act, 1994 - Appeal seeking direction upon respondents for compliance of Section 95 read with Section 233 of Act and to allow petitioners to attend meetings of Board of Directors of respondent No. 1 - Whether prayer as prayed for can be granted to petitioner by this court? - Held, Sections 197, 233 and 241 of Act are of their own category - Under Section 197 'Court' by order may declare that affairs of company ought to be investigated by inspector appointed by government - Under Section 233 Company Court may assume jurisdiction to protect interest of minority shareholders against majority shareholders - Under Section 241 Company Court will assume jurisdiction in winding up of company - Act specifically provided jurisdiction of Company Court to be applied under specific provisions -Court does not have any general, plenary or residuary jurisdiction to deal with other matters and questions arising under Act -Section 95 does not specifically provide jurisdiction to court - Therefore, only remedy available to petitioner is Civil Court and not this Court - Applications rejected. [23]

Cited in DB

84. Abdul Quader Mollah vs. The Chief Prosecutor, International Crimes Tribunal, Dhaka (11.12.2013 - BDAD)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Muzammel Hossain, C.J., Surendra Kumar Sinha, Md Abdul Wahhab Miah, Syed Mahmud Hossain and A.H.M. Shamsuddin Choudhury

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85. Abdul Quddas vs. Government of Bangladesh (27.06.1990 - BDHC)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 416 of 1987 Appellants: Abdul Quddas Vs. Respondent: Government of Bangladesh

CaseNote: Property - Abandoned buildings - List of - This Rule Nisi was issued upon respondents to show cause why judgment and order should not be declared to have been passed without any lawful authority - Whether Court of Settlement rightly held that building was illegally included in list of abandoned buildings - Held, Court of Settlement made necessary enquiry - After giving reasonable opportunity to parties concerned of being heard, made impugned decision - Court of Settlement competent and within its jurisdiction to allow prayer to exclude any building from list of abandoned buildings - No reason to interfere with impugned judgment and order - Rule is discharged. [26]

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86. Abdul Quddus vs. Mobarak Hossain (28.08.1996 - BDHC)

Add to session list

Rezaul Huq Molla vs. Afizullah Mollah and others, reported in 42 **DLR** (AD) **74**, Punjab Ali Pramanik and others vs. Mohd Mokarrum Hossain, 29 **DLR** (SC) 185

CaseNote: Civil - Restoration of Suit - Section 151 and Order 9 Rule 9 of Code of Civil Procedure, 1908 - Whether suit which was dismissed for default for non-appearance of plaintiff can be restored under Section 151 CPC instead of filing a Misc. Case under Order 9 Rule 9 CPC? - Held, this court is of view that trial Court himself committed mistake in dismissing suit finding that plaintiff was not willing to proceed with same and as such, trial Court legally has exercised his jurisdiction under Section 151 CPC - Secondly, this court find that by restoration of suit no failure of justice has been caused - In view of this court, it is not unjust, when two parties come before court for justice, final and effective order in litigation if passed after hearing of both parties on merits - In respect of Section 151, Appellate Division and High Court Division have given a very thoughtful and careful decision holding that only for ends of justice discretion under Section 151 CPC cannot be exercised, but when there is mistake of court itself, it can be - In fine, in present case, mistake has been committed by court and rightly and legally it has been cured by restoring suit itself and in that view of matter, there is no failure of justice in impugned order - So this court not inclined to interfere - Therefore, no merits in this Rule - Rule is, therefore, discharged. [8],[10],[11]

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87. Abdul Wadud Khandkar vs. The State (16.04.1964 - HEPK)

Add to session list

Criminal Revision No. 701 of 1963 Appellants: Abdul Wadud Khandkar Vs. Respondent: The reference may be made to the case of Mirza Muhammad Abbus vs. The State 16 **D.L.R.** (P.W.)34

Cited in DB

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88. Abdul Wazed Sharif vs. Shudhir Ranjan Biswas and Ors. (15.03.2007 - BDAD)

Add to session list

Order dated 19.6.1997 passed by the High Court Division in Civil Revision No. **74** of 1988 Rahim reported in LEX/BDHC/0088/1982 : 35 **DLR** 132 and the High Court Division also fell in

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89. Abdullah Al-Harun vs. Delwar Hossain Chowdhury and Ors. (17.07.2016 - BDAD)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Petition for Leave to Appeal No. 129 of 2013 Abdul Wahhab Miah, Nazmun Ara Sultana, Muhammad Imman Ali and Md

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90. Abdullah-al-Mamun vs. Secretary, Ministry of Land, Govt. of Bangladesh and Ors. (21.01.2004 - BDAD)

Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Petition for Leave to Appeal No compensation has been paid; again on 15-10-**74** a notification was made under section 3 of

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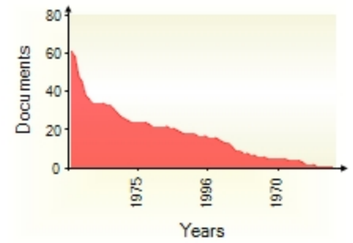

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91. Abdun Noor and others vs. Aziruddin and others (08.05.2012 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 233 of 2002 Appellants: Abdun Noor and others Vs. Respondent: Aziruddin and others The deed of sale and the

CaseNote: Property - Title - Suit for - Present appeal by leave arises out of judgment and order passed by High Court Division in Civil Revision, affirming judgment and decree passed in Title Appeal which reversed judgment and decree passed in subject Title Suit - Whether judgment and order passed by High Court Division need interference - Held, mere non-payment of rent does not affect title accrued through lawful transfer - Title of plaintiffs' vendor well established - Plaintiffs could not prove their title in respect of two plots of land - This appeal should succeed in part - Appeal partly allowed. [21]

92. Abdur Jabbar Sheikh vs. Md. Rafiqul Islam (Jwell) and Ors. (12.08.2010 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 2216 of 2003 Appellants: Abdur Jabbar Sheikh Vs. Respondent: Md Acts/Rules/Orders: Evidence Act, 1872

CaseNote: Contract - Specific performance - Section 27 (para b) of specific relief Act 1877 - Appeal against judgment and decree reversing those of Subordinate Judge whereby suitfor Specific Performance of Contract decreed - Whether defendant No. 4-6 are bona fide purchaser for value without notice of earlier Bainapatra as claimed? - Held, defendant No. 3 denied fact of plaintiffs Bainapatra - Defence witness admitted that he "plaintiff being sitting tenant of suit land earlier mediated his other purchase of land beside suit property - That being admission it was heavily rest on shoulder of defendant No. 3 to prove that he had consulted plaintiff and found that there was no impediment in purchasing suit land which if so happened could be proved by corroborative witnesses - None of defence witnesses said anything regarding such fact -Seller R, defendant No. 1 had collusion with defendant No. 3 in asserting falsely before court of law that he had not executed any Bainapatra in favour of plaintiff which revealed false by examination of hand writing expert - Therefore defendant No. 3 was not bona fide purchaser of suit land so as to take cover upon provision of Section 27 (para b) of Act - Rule made absolute - Impugned judgment and decree passed by Appellate court hereby set aside and of trial court restored. [38], [39], [40]

93. Abdur Rahim and others vs. The State (15.12.1965 - HEPK) Add to session list

Criminal Revision Case No. 69 and 80 of 1963 Appellants: Abdur Rahim and others Vs. Respondent: The State Hon'ble Judges: Baquer and A. Subhan Choudhuri, JJ

94. Abdur Rahman Syed vs. State (11.12.1991 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Death reference 1 of 1986 with Jail Rahman was engaged in oil business at Moulvi-bazar being his shop at No. **74** Ali and Sons

CaseNote: Criminal - Conviction - Murder - Section 164and 342 of Criminal Procedure Code, 1898 and Section 302 of Penal Code, 1860- Appeal against judgment and orderconvicting appellant under Section 302 of Penal Code - Whether appellant rightly convicted under Section 302 of Penal Code? - Held, no eye-witness of occurrence of causing death to victim -Conviction of appellant based on circumstantial evidence as well as on his self-inculpatory confession made before Magistrate - Recording confession of accused, recording Magistrate has fully complied with provisions of Section 164- Recording Magistrate stated that appellant being repentant voluntarily made confessional statement before him under Section 164 CrPC- No mark of any injury or torture found on any part of body of appellant - Before recording same, sufficient time given to appellant for his reflection - Recording Magistrate testified that inculpatory confession made by appellant was voluntary and true - Sessions Judge duly considered confessional statement and on scrutiny found same to be voluntary and true - So-called retraction though suggested by defence while cross examining witnesses, and examining appellant under Section 342 CrPC appears to

have no reliable basis to stand upon - Hence, alleged retraction goes unsubstantiated and provisions of Section 164 CrPC as required under law fully complied with by recording Magistrate - Self-inculpatory confession of condemned prisoner appears to be quite true, voluntary and trustworthy - Hence, circumstances as in impugned judgment itself, appear to be satisfactorily -

Impugned judgment established by evidence of those who seem to be disinterested and independent - Thus, from established circumstances, only hypothesis that can be drawn in this case is of guilt of prisoner and his complicity in murder of victim well established - So, no illegality in impugned judgment and order of conviction against appellant under Section 302 Penal Code - His conviction under Section 302 PC therefore confirmed and upheld. [55]

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95. Abdur Rashid vs. Secretary, Ministry of Cabinet Affairs and Ors. (07.01.1980 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 124 of 1979 the case of Bangladesh vs. Md Abu Taker 31 **DLR** (AD) 33, that Article 7 of the President's

CaseNote: Service - Termination - Appeal filed against termination of Appellant from service - Whether order of termination passed in violation of principle of natural justice - Held, Appellant reiterated that Screening Board advised him to be more careful in his service career and has warned him - It was not denied by Government in affidavit - It was a case of pick and choose without giving any reason - Sentence that had been passed by Government was done in violation of minimum requirement of principles of natural justice - Appeal allowed. [19]

Service - Termination - Appeal filed against termination of Appellant from service - Whether order of termination passed in violation of principle of natural justice - Held, statute gives authority to appointing authority to award higher punishment - Power was to be exercised by authority on consideration of materials collected by Screening Board - Majority Judges of Bench opined that in awarding higher punishment it could not be submitted that duty has been cast upon appointing authority to give notice of proposed higher punishment unless it could be shown that it was passed arbitrarily - Appeal dismissed. [7]

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96. Abdur Rashid vs. Government of Bangladesh and Ors. (24.07.1979 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 83 of 1979 the impugned order being Memo No. 8/XVI/2A-**74**/73/91 dated 30th January, 1979 (Annexure A

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97. Abdur Rashid vs. Momtaz Ali Karikar and others (12.03.1992 - BDAD) Add to session list

the case land to the pre-emptee, Momtaz Ali Karikar by deed of release dated 13.3.**74** applied the facts of the case reported in 36 **DLR** (AD) 1 to the facts of the present case

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98. Abdur Razzak vs. Ahila khatun and Ors (28.05.1992 - BDHC) Add to session list

by a registered deed of sale dated 22.5.**74** and Defendant No. 9 Majibar sold.171/2 acre of registered deed of sale dated 25.3.**74** and, thereafter, Sekandar Ali, defendant No. 33, son

CaseNote: Code of Civil Procedure 1908 (Act V of 1908)

Section 115 - A revisional Court can no: go into a question of fact unless the petitioner is able to show that the concurrent finding of fact arrived at by the Courts below is perverse or it is based on no evidence or on misreading of evidence.

Evidence Act, 1872

Section 65--Secondary evidence is not admissible in evidence unless there is proof of execution of the original and its subsequent loss or distraction. In the case of a Hiba-bil--Ewaj deed, actual delivery of possession is not necessary, payment of consideration to the donor and the bonafide intention of the donor to divest himself in present of the property are enough for a valid transfer under the deed of Hiba-bil-Ewaj.

Meherchand Banu Vs. Salimullaha & others, 22 DLR (HC) 316, 6 DLR (P.C) 598--Cited

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99. Abdur Rouf Chowdhury (Md) vs. Abdul Hashem (Hashu) and another (17.10.2000 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revisional No. 1906 of 1998 in respect of other lands i.e. at Plot No. **74** under Khatian No. 68 and also 10 acres of

CaseNote: Property - Local Investigation - Injunction for - Order 39 Rule 7 of Code of Civil Procedure, 1908 (CPC) - Whether

seeking permanent injunction claiming that he is in possession of suit land in part performance of contract and so this suit is not for declaration of title nor for recovery of possession whereas defendants/opposite party claimed that suit land was

originally nal land and they after expending certain amount converted same into a viti land and constructed structures therein - So, it appears that prayer of opposite parties for local inspection is within ambit of Order 39, Rule 7 CPC and prayer is not irrelevant nor unnecessary and accordingly, Assistant Judge did not commit any illegality in passing impugned judgment and order and accordingly, no interference is called for - In result, Rule is discharged without any order as to cost. [6]

Cited in DB

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100. Abdus Sabur Mollah (Md.) vs. Md. Ahad Mollah and Ors. (28.06.2018 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 6085 of 2007 of a registered deed of gift dated 5-3-**74** and thereafter, the defendant No. 3 sold out 60

CaseNote: Property - Partition - Whether suit was bad for defect of parties and hotchpotch? - Held, it appears that record of right was wrongly prepared in name of defendants - Court of appeal below after a detailed discussion of attending circumstances borne out by records held "mere preparation of record of right as contended by appellant does not create any right and title on suit land" - Furthermore, it appears from record that original kabala was mortgaged to Krishi Bank and it was called for comparison, trial Court has decided that kabala of plaintiff is earlier to kabala of defendant No.1 and plaintiff's kabala has been duly acted upon - Proposition of law is well settled that a registered kabala is an evidence of title which will prevail over other records of rights, until and unless such kabala is cancelled on specific allegation of fraud by any civil Court in an appropriate civil suit and in this case defendant/petitioner admitted in his evidence that he did not file any such suit for declaration of title and cancellation of registered kabala - In this case it is also found that was original kabala, which mortgaged to Krishi Bank, by plaintiff and it was called for comparison at trial and that registered document is more than 20 years old document - No dispute was raised in trial Court as to its registration (kabala) - Therefore, sitting under revisional jurisdiction, this court is unable to agree that defendant No. 3 in collusion with plaintiff/opposite party created fraudulent kabala in order to defraud defendant/petitioner or kabala was not acted upon - Suit having been concluded on concurrent findings of fact, it is very difficult to interfere with such findings sitting under revisional jurisdiction, unless it is found that concurrent findings of fact are perverse being contrary to law or evidence and materials on record - In view of above discussions made above it is by now clear that instant Rule must fail - In result, Rule is discharged without any order as to costs - Judgment and decree of affirmance passed in Title Appeal is hereby maintained. [25],[26],[28], [30],[38],[39]

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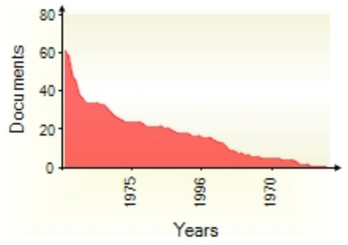

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101. Abdus Sattar and others vs. International Finance Investment and Commerce Bank Ltd. (16.05.1999 - BDHC) Add to session list

by the plaintiff-Bank for realisation of Taka 16,**74**,458.01 only with interest at the rate and Ors, reported in 1981 BLD (AD) 230 = 33 **DLR** (AD) 298 and also in the case of Triveni

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102. Abu Aktcr (Md) vs. State and another (18.03.2008 - BDHC) Add to session list

Karachi 94, Arshad Ali Sk vs Bangladesh, 29 **DLR** 301, Akhtar Hossain Khan vs State, 29 **DLR** (SC) 101 has been referred

CaseNote: Criminal - Dishonour of cheque - Section 138 of Negotiable Instruments Act, 1881 (NI Act) - Appeal against judgment and order convicting petitioner under Section 138 of NI Act - Whether Judgment passed by Sessions Judge sustainable in law or not? - Held, Section 138 of NI Act is change in procedure as to holding of trial by Sessions Court instead of Magistrate's Court - Petitioner does not claim any benefit on ground of applying it to pending proceeding - Proceeding is said to be pending when cognisance taken by Court - Magistrate before sending case for trial, taken some steps which are functions of Magistrate in his judicial capacity, which requires for interest of justice -Case is said to be pending before Court when cognisance has been taken - Magistrate did not take cognisance rather Sessions Judge took cognisance -In presence of petitioner, Sessions Judge took cognisance - Thereafter, petitioner participated in proceeding till pronouncement of Judgment - As such, now petitioner cannot turn round to say proceeding was held without jurisdiction - Judge committed no illegality in passing impugned Judgment - Rule discharged. [12],[13], [14], [15]

103. Abu Taher Chowdhury and ors. vs. State (01.04.1990 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Criminal Appeal No. 11 of 1989 Counsels: For Appellant/Petitioner/Plaintiff: Abdul Malek, Senior Advocate, Supreme Court

CaseNote: Criminal - Murder - Conviction of - Sections 302, 34 of Penal Code - Present appeal by Special Leave arises against order of High Court division confirming order of conviction of appellants under Sections 302, 34 of Penal Code - Whether order confirming conviction under challenge need interference - Held, power of interference is discretionary - Except under exceptional circumstances, no interference with findings of fact reached by High Court Division - Unless High Court Division misread and misappreciated evidence on record committing substantial and grave miscarriage of justice - No interference calls for in present case - Appeal dismissed. [137]

104. Abual Farah Molla vs. A.K.M. Mozammel Huq Sikdar (10.02.1965 - HEPK) Add to session list

show cause why the order dated 2-8-**74** of the Sub-Divisional Magistrate, Bhola in M.R. Case and disposed of the Rule that was issued in that Revision Case by its order dated 6-3-**74**

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Held: It is a settled principle of law that a prosecutrix should be corroborated by independent evidence or circumstances in order to base the conviction upon her evidence, particularly when the prosecutrix an adult woman.

Montaz Ahmed Khan Vs. The State, 19DLR (SC) 259; Rashid Ahmed Vs. The State, 10DLR 532; Mofizuddin Mondal Vs. The State, 14DLR 821; Md. Abdul Khaleque Vs. The State, 12 DLR(SC) 165-Cited

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118. Abul Khair Mia vs. Abdul Latif Sardar (05.02.1980 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 142 of 1978 From the judgment and Order dated 5-9-**74** passed by the High Court Division in Writ

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119. Adamjee Jute Mills Ltd. and others vs. Controller of Imports and Exports, Govt. of E. Pak. Chief Controller of Imports and Exports Rawalpindi, Govt. of Pakistan, through the Secretary, Ministry Commerce, Rawalpindi, Muslim Commercial Bank Ltd. and others (22.02.1968 - HEPK) Add to session list

Hon'ble Judges: S.D. Ahmed and Mahmud Hussain, JJ They imported steel strips, pig iron was subsequently modified by Public Notice No. **74**(66)/Import-R dated 20th September, 1966

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120. Administrator, Zilla Board vs. Mukhlesur Rahman (30.10.1983 - BDHC) Add to session list

the proceedings drawn up by memo dated 3.6.**74** and the order stopping his increments dated 26.10.**74** are illegal and without jurisdiction

CaseNote: Civil - Maintainability of suit - Appeal challenging legal status of employees appointed by District Councils, under Works Programme - Whether suit maintainable or not? - Held, as plaintiff is employee belonging to class apart from Local Council Service he is not entitled to benefit of decision of Full Bench case - Difficult to see that all 3 orders against which he seeks declarations cannot be remedied by suit of this nature -Relationship of plaintiff with his employer is, Munsif has correctly found, that of master and servant - If he is aggrieved by 3 orders complained of his remedies lie in suing for damages - Suit not maintainable in its present form- Appeal dismissed. [20]

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128. Ahmed Nazir, on behalf of detenue A.K.M. Golam Kabir vs. Bangladesh, through Secretary, Ministry of Home Affairs, Government of Bangladesh, Secretariat Buildings, Dacca and ors. (19.12.1974 - BDHC) Add to session list

a Rule Nisi was issued on 22-7-**74** calling-upon the respondents to show cause why the Jail for being detained there, On 16-7-**74** the detenue was served with the grounds of

CaseNote: Criminal - Detention - Legality of - Present rule nisi was issued calling-upon respondents to show cause why petitioner' cousin should not be brought before this Court in order to satisfy itself that he is not being held in custody without lawful authority or in unlawful manner - Whether detenue is being held in custody without lawful authority - Held, for purpose of importing goods from abroad, any business man, if not honest, can take recourse to illegal transaction in foreign exchange - Connection between such illegal transaction and other activities mentioned in grounds of detention cannot altogether be ruled out - These particulars, and facts stated in grounds of detention, are discernible from letters/ cable which detenue sent from Colombo and New Delhi - Detenue is not held in custody without lawful authority or in unlawful manner - Rule discharged. [50]

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129. Ahmed Services Limited vs. The Commissioner of Taxes (14.12.2014 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Appellants: Ahmed Services Limited Vs. Respondent: The Commissioner of Taxes Hon'ble Judges/Coram: A.F.M. Abdur Rahman and

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130. Akbar Ali Lalu vs. State (18.11.2013 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Appellants: Akbar Ali Lalu Vs. Respondent: State Hon'ble Judges/Coram: Moyeenul Islam Chowdhury and Kazi Md

CaseNote: Criminal - Dacoity with murder - Appeal and death reference against judgment and order of conviction and sentence passed by Judge of Druto Bichar convicting accused-appellants and co-accused under Section 396 of Penal Code, 1860 and sentenced each of them thereunder to death - Whether four accused can be convicted and sentenced under Section 396 of Penal Code?-Held, Only one accused was armed with revolver - Victim was defenceless and in jogging apparels - Nothing on record to show that accused encircled by local people at material time - Accused fired fatal revolver shot on victim resulting in his eventual death to escape - Firing of fatal revolver shot on victim by accused was not necessitated by exigency of situation - Accused were involved in commission of dacoity - Five accused including absconding accused were charge-sheeted under Section 396 of Penal Code - Conviction recorded against four accused cannot be found fault with - Appeals dismissed - Death Reference accepted in part. [206],[211]

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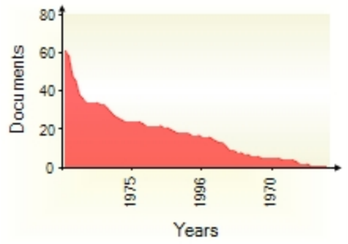

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131. Aku Gazi and Ors. vs. State and Ors. (17.01.2014 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Criminal Appeal No. 4538 of 2004 Counsels: For Appellant/Petitioner/Plaintiff: Kh Acts/Rules/Orders: Code of Criminal

CaseNote: Criminal - Gang Rape - Appeal against judgment and order of conviction and sentence passed by Judge under section 9(1)/30 of Nari-o-Shishu Nirjatan Daman Ain-2000 convicting appellants under section 9(1) of said Ain-2000 and sentencing them to suffer rigorous imprisonment for life and also to pay a fine each, in default to suffer rigorous imprisonment for 1 year more- Held, Victim was raped on night of occurrence by accused -Entire evidence on record it appears that victim was raped by appellants -Medical Board has observed that victim was bearing sign of forceful sexual acts -Victim herself and witnesses have corroborated facts, with each other - Time, place and manner of occurrence as alleged have been conclusively proved - Chain of evidence and materials on record appears to be complete and unbroken - Appeal dismissed -Order of conviction and sentence affirmed. [71],[72],[73], [74],[75]

132. Aku Gazi and Ors. vs. The State and Ors. (17.01.2013 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Criminal Appeal No. 4538 of 2004 Counsels: For Appellant/Petitioner/Plaintiff: Kh Acts/Rules/Orders: Code of Criminal

133. Al Amin vs. The State (10.12.1998 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Criminal Appeal No. 694 of 1996 with Criminal Appeal No. 687 of 1996 with Criminal Appeal No. 691 of 1996 with Criminal

CaseNote: Code of Criminal Procedure, 1898 (V of 1898)

Sections - 236 and 237

An offence under a particular section if not proved but some other offence is made out by the prosecution, the accused persons can be very well convicted and sentenced for the other offences proved before the court through legal evidence and the same is permissible in view of the provisions of sections 236 and 237 of the Code.

Evidence Act, 1872 (I of 1872)

Section--134

Law does not require particular number of witnesses to prove a case and conviction may be well founded even on the testimony of a solitary witness provided his credibility is not shaken by any adverse circumstances appearing on the record against him and the court at the same time, is convinced that he is a truthful witness. As a general rule, a Court can act on the testimony of a single witness though uncorroborated and one credible witness outweighs testimony of a number of other witnesses of indifferent character. Evidence on a point is to be judged not by the number of witnesses produced but its inherent truth.

Code of Criminal Procedure, 1898 (V of 1898)

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IN THE SUPREME COURT OF BANGLADESH (HIGH COURT their names vide mutation case No. 249/73-**74**, 250/73-**74**, 251/73-**74**, and 252/73-**74**; that the defendant No. 5 Monindra Chandra Roy

CaseNote: Property - Declaration of title - Petition filed against decre of suit for declaration of title over suit property - Whether suit was barred by limitation and was bad for defect of parties - Held, it appeared that specification of suit land was not proper - Trial Court held that Respondent could not prove his possession in suit land but Appellate Court held that Respondent could prove his possession in suit land - It appeared from deposition of witnesses that Respondent could not prove his exclusive possession in suit land - Finding of possession as arrived at by Appellate Court was illegal - Suit was barred by limitation - Appellate Court committed error in law in allowing appeal - Rule made absolute. [9], [10],[12], [16]

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149. Altas Member and Ors. vs. Shamser Alam Chowdhury and Ors. (15.08.2005 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 3407 of 2003 Hon'ble Judges/Coram: Shahidul Islam, J For Respondents/Defendant: Mahbubey Alam and Md

CaseNote: Civil - Permanent injunction - Order XXI Rule 32(1) andSection 151 of Civil Procedure Code, 1907 (Code)- Appeal against Order No. 24 allowing application made under Order XXI Rule 32(1) read with Section 151 of Code directing Opposite Party Nos. 15 and 16 to make delivery of possession of suit land in favour of Decree-Holder - Whether decree holder should be forced to file another fresh suit for getting back delivery of possession in suit land -Held, decree-holder should not be forced to file fresh suit against Petitioners who allegedly taken possession through Judgment-Debtor during pendency of appeal -It is settled law that decree for permanent injunction can be enforce for its violation by taking recourse to provision of Order XXI Rule 32(1) of Code and not by fresh or separate suit -Such decree should be enforced without taking recourse to separate suit -Order XXI rule 32(1) although does not provide for delivery of possession but Section 151 of Code empowers executing Court to direct judgment debtor for making delivery -Herein judgment-debtor, himself having inducted Petitioners into possession assuming suit property to be vested property and that having been done during pendency of appeal -For avoiding multiplicity of litigation, Decree-Holder entitled to get restoration of possession from judgment-debtor - There has been made deliberate violation committed by judgment debtors and execution case is not void proceedings - Petitioners before this Court is 3rd party to decree and having no locus standi to file revisional application - Rule discharged - Impugned Order hereby affirmed. [20], [21], [22], [23]

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150. Alvi Spinning Mills Ltd. vs. Government of Bangladesh (30.01.2014 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Appellants: Alvi Spinning Mills Ltd. Vs. Respondent: Government of Bangladesh Acts/Rules/Orders: Constitution Of The

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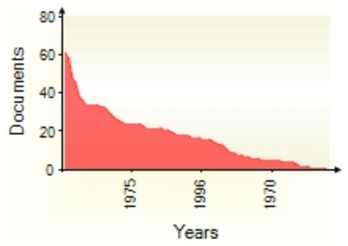

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151. Aman Ullah Chowdhury and Ors. vs. Bulbul Lalitkala Academy (14.11.2013 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Petition for Leave to Appeal No. 1253 of 2011
Muzammel Hossain, C.J., Surendra Kumar Sinha, Md

CaseNote: Civil - Revision - Summary disposal of - Section 115(1) of Code of Civil Procedure (CPC) - Present civil petition for leave to appeal is from order passed by High Court Division summarily disposing of application filed by plaintiff-respondent under Section 115(1) of CPC - Whether High Court Division was correct in its approach in disposing of revision application under Section 115(1) of CPC summarily - Held, giving relief in summary manner without hearing other side(s) is clearly violative of law - Also violate principles of natural justice - High Court Division erred in disposing of revision application summarily - Impugned order set aside - Petition disposed of. [5]

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152. Aman Ullah Chowdhury and Ors. vs. Bulbul Lalitkala Academy (Bulbul Academy of Fine Arts BAFA) (14.11.2011 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Petition for Leave to Appeal No. 1253 of 2011
Muzammel Hossain, C.J., Surendra Kumar Sinha, Md

CaseNote: Property - Title - Suit for - Present civil petition for leave to appeal is from order summarily disposing of application filed to challenge order passed in Title Suit filed for declaration that impugned circular shown to have been signed by defendants is illegal, collusive and is not binding upon it - Whether order under challenge need interference - Held, High Court could not dispose of revision application summarily by giving full relief to plaintiff-petitioner in absence of defendant-opposite parties - Giving relief in summary manner without hearing other side is violative of law - No final/absolute order of detrainment/injunction can be passed against party(s) without affording him/it any chance of showing cause - Impugned order set aside - Petition allowed. [8]

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153. Amarbati Natya Mandir vs. State (04.02.2009 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Appeal from Original Order No. **74** of 2005 Appellants: Amarbati Natya Mandir Vs. Respondent: State

CaseNote: Civil - Abatement of Suit - Order XXII, Rule 10 of Code of Civil Procedure, 1908 (CPC) - Whether impugned order refusing to grant leave to Plaintiff to proceed with suit after recalling order of abatement of suit on death of secretary who had been prosecuting suit on behalf of Plaintiff is legal - Held, it is settled principal of Rule under Order XXII, Rule 10 of CPC that trial of suit cannot be arrested merely by reason of devolution of interest of party in subject matter of suit; person acquiring interest may continue suit with leave of Court - This rule will apply where substitution of heirs and legal representatives under Rules 3 and 4 of Order XXII does not apply - There can be no abatement under this Rule - When a suit is brought by or against a person in representative capacity and there was devolution of interest of representative, rule that had to be applied was Order XXII, Rule 10 and not Rules 3 or 4, whether devolution takes place as consequence of death or for any other reason - Joint District Judge illegally abated suit - Succeeding Secretary of Plaintiff was legally entitled to prosecute suit with leave of Court - Joint District Judge thus has committed error of law in recording an order of abatement of suit and also in refusing to grant leave to Plaintiff to prosecute suit through its successor Secretary - Accordingly, order of Joint District Judge in refusing to recall order of abatement of suit land to grant leave to proceed with suit through successor in office of Plaintiff was based on misconception of law, which was liable to be interfered with - In result, appeal was allowed - Impugned judgment and order of Joint District Judge was set aside. [18],[19],[21]

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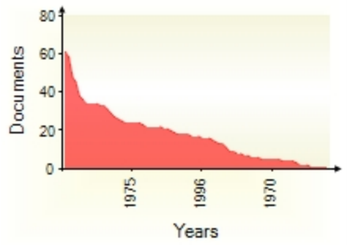

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161. Amizuddin Ahmed vs. Election Tribunal, Narayanganj and ors. (07.07.1975 - BDHC) Add to session list

8. **74** of the Election Tribunal, Narayanganj (Respondent No. 1) accepting the report of a was appointed by an order dated 25.3.**74** inspite of serious objections made by the

CaseNote: Election - Legality of - Report of - Pleader Commissioner - Rule 56 of Bangladesh Union Parishad and Pourashava Election Rules, 1973 - Appeal challenging order accepting report of Pleader Commissioner appointed in connection with election petition filed under Rule 56 of Rules - Whether tribuna; rightly appointed Pleader Commissioner for counting ballot? - Held, it is settled law that provisions of Civil Procedure Code are applicable, as far as possible, to trial of election petition under Rule 61-A and 61-B -But provisions of Court to temporary injunctions not applicable and that Tribunal cannot make order, which has not relation to trial of election dispute - So, provisions as to appointment of Pleader Commissioner under Code not applicable to election-petition - When order suffers from want of jurisdiction it can be challenged at any stage - Therefore, Tribunal got no jurisdiction to appoint Pleader Commissioner for counting ballot papers including determination of validity of ballot-papers -Impugned order declared to have been made without lawful authority, and of no legal effect and is set aside - Rule made absolute with costs. [6], [7]

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162. Amran Uddin vs. Lucky Jahan (16.11.2021 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 2831 of 2012 Appellants: Amran Uddin Vs. Respondent: Lucky Jahan Ruhul Quddus and Kazi Ebadoth Hossain

163. Annada Prasad Das vs. DC, Khulna and others (28.06.2001 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Second Appeal No. 491 of 1975 affirming the judgment and decree dated 8-7-**74** passed by the Munsif, 1st Court, Bagerhat

CaseNote: Civil - Citizenship - Appeal filed against dismissal of suit for declaration that Appellant was a citizen of Country - Whether Appellant made out case to declare him citizen of Country - Held, right of citizenship acquired by birth could not be lost unless it proved that he has given it up and acquired citizenship of any other country - Lower Courts illegally shifted onus to prove upon Appellant - There was no violation of any law as to losing citizenship of Appellant - Lower Courts under misconception of law and miscalculation of evidence have dismissed suit - Appeal allowed. [22], [31]

164. Annanda Prosad Das vs. The People's Republic of Bangladesh and others (28.06.2001 - BDHC) Add to session list

AD)116; Bangladesh v. Prof. Golam Azam 46 **DLR**(AD)192; Abeda Khatun and another v. State of affirming the judgment and decree dated 8.7.**74** passed by the Munsif, 1st Court, Bagerhat

CaseNote: Bangladesh Citizenship Temporary Provisions Order 1972(P.O.149 of 1972)

Articles - 2, 2A and 2B

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179. Asaduzzaman Siddiqui and Ors. vs. Bangladesh Represented By the Cabinet Secretary, Cabinet Division, Bangladesh Secretariat and Ors. (05.05.2016 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 9989 of 2014 People's Republic Of Bangladesh - Article **74**, Constitution Of The People's Republic Of

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180. Asaf Khan and others vs. The Court of Settlement, First Court, Dhaka and others (21.08.2002 - BDHC) Add to session list

of Industries Vs. Saleh Ahmed, reported in 46 **DLR**(AD) 148=1981 BLD(AD) 91; London Property another Vs. Bangladesh Biman Corporation, 52 **DLR** 308; Civil Service Union and others Vs

CaseNote: Legitimate expectation

Legitimate expectation is a concept of administrative law which means that an administrative authority cannot abuse its discretion by disregarding undertaking or statement of its intent. Where an action of the administrative authority adversely affects legal right of an individual, duty to act fairly and reasonably is implicit.

Constitution of Bangladesh, 1972

President Order No. 16 of 1972

Articles - 4 and 5

Abandoned Property (Buildings in the Urban Areas) Rules, 1972

Rule--10(1)

The Government is fully authorized to transfer any abandoned property by way of sale and as such the provision in clause (c) of Rule 10(1) framed thereunder does not divest the Government of its power to deal with the property in question in the manner as has been done by the memo.

Cases referred: Government of Bangladesh Vs. Md. Jalil and others, reported in 48DLR(AD)10; Secretary, Ministry of Industries Vs. Saleh Ahmed, reported in 46 DLR(AD) 148=1981 BLD(AD) 91; London Property Trust Ltd Vs. High Trees House Ltd reported in (1947)1 KB130; Hong Kong Vs. Ng Yuen Shiu, (1983)2 AC 629=(1983)2 All ER 346; Rabia Bashri Irene and another Vs. Bangladesh Biman Corporation, 52 DLR 308; Civil Service Union and others Vs. Minister for the Civil Service decided by House of Lords (1985) AC 374; United Commercial Bank Ltd and another Vs. RehimAfrooz Bateries Ltd and others, 7BLC(AD)73; Government of Bangladesh and others Vs. Sree Sree Luxmi Janardhan Jew Thakur, reported in 10BLT(AD)16

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CaseNote: State Acquisition and Tenancy Act, 1950 (Act XXVIII of 1951)

Section 95A

A transfer of a holding etc. by way of an out and out sale, or with an agreement to reconvey etc. whether shall be deemed to be a complete usufructuary mortgage for a period not exceeding seven years.

Held: A transfer of a holding etc. by way of an out and out sale with an agreement to reconvey or whether the transferor receives from the transferee any consideration and the transferee acquires the right to possess and enjoy the usufruct of such holding etc. for a specified period in lieu of such consideration, shall not withstanding anything contained in the documents relating to the transfer, be deemed to be a complete usufructuary mortgage for a period not exceeding seven years.

Bangladesh Vs. Haji Abdul Gani Biswas, 32 D.L.R (AD) 233-Cited

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188. Assessee vs. Department (29.12.2005 - BDIT) Add to session list

IN THE TAXES APPELLATE TRIBUNAL, DHAKA Hon'ble Judges/Coram: T.A. Chowdhury and Ananda Mohan Das, Members For Respondents/Defendant: Abdul Maleq, ITP and Mohiuddin Sarwar

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189. Atauddin Khan and Ors. vs. Hafizullah Bhuiyan and Ors. (29.11.1978 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Appeal From Original Decree No. 128 Rules/Orders: Contract Act, 1872 - Section **74**; Specific Relief Act, 1877 - Section 39

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190. Ataur Mridha and Ors. vs. The State (17.07.2016 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Hon'ble Judges/Coram: Surendra Kumar Sinha, C.J., Syed Mahmud Hossain, Hasan Foez Siddique, Mirza Hussain Haider and

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Secretary, Basic Democracies and others 20 **DLR** 923 the present requisition must also be Mr. Sadi contended that since Article **74** of the Basic Democracies Order, 1959 authorities

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199. Ayezuddin Sheikh and ors. vs. Abdul Karim Sheikh and ors. (31.05.1989 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION) (Jessore Civil Revision No. **74** of 1986 Hon'ble Judges/Coram: Mohammad Ansar Ali, J Acts/Rules/Orders: Code of Civil

CaseNote: Civil - Maintainability of suit - Section 7-viiiA of Court Fees, 1870- Appeal against judgment and order reversing those of Munsifrejecting application for dismissing suit on ground of non-maintainability - Whether impugned judgment and order suffers any illegality or infirmity or not? - Held, present suit is suit for setting aside ex parte decree passed in suit for specific performance of contract - In plaint of this suit, prayer has been made by petitioners for setting aside of entire ex parte decree of suit which was valued at 6000/- only - But for reasons unknown, present suit valued at Tk.3,500/- only -Impugned decree and plaints of both suits shows that Section 7-viiiA of Court Fees Act is very much applicable in this case - Present suit with relief claimed therein has been under-valued - Insufficient court fees paid thereon - So, finding of Subordinate Judge that suit is hit by section 7-viiiA of Act appears to be correct - Findings of trial court is wrong -Present suit may, come within mischief of Order 7, rule 11 of CPC - Before rejection of plaint of suit, plaintiff must be given time as provided in law to correct valuation of suit and for payment of deficit court fees - Rule 11(d) of Order 7 of CPC may be put into operation, only when plaint found to be barred by any law -In instant case, nothing has been shown to establish that suit is barred by any law - So, finding of Subordinate Judge is without any legal basis - Hence, cannot be sustained in law - Impugned judgment and order of Subordinate Judge suffers from serious legal infirmities and same has caused failure of justice - Rule made absolute - Impugned judgment and order set aside.[12]

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200. Ayub Hossain Khan vs. Bangladesh (04.05.2014 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Petition for Leave to Appeal Nos Appellants: Ayub Hossain Khan Vs. Respondent: Bangladesh By Leave Petition No. 1901 of

CaseNote: Tenancy - Eviction - Order of - Present civil petitions for leave to appeal directed against judgment and order passed by High Court Division in writ petition filed, whereby eviction order issued by authorities was affirmed - Whether judgment and order passed by High Court Division need interference - Held, authorities concerned stated that yearly lease would be extended every year until permanent decision is taken on vested properties - Expectation, if any, died natural death when authorities resolved to convert subject property into archive to preserve Shuchitra Sen's memory - Permanent decision taken on this vested property - Petition dismissed. [114]

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Per B.H. Chowdhury, J

When there are categories of penalty--minor penalty and major penalties.....the question of imposition of punishment becomes relevant for consideration as to the application of mind of the authority concerned. The authority concerned must assign some reasons while awarding a particular type of penalty. So that when challenged it can be demonstrated that the penalty imposed is commensurate with the charge proved. That the dismissal is harsh runs like a refrain in this case. The enquiry officer recommended 'censure.' The Public Service Commission opined that the dismissal will be harsh and censure will be enough. Even the ultimate Judicial view is such, e.g. punishment by dismissal is harsh and it should be compulsory retirement which again is a major penalty yet the respondent it seems cannot get the relief for which he came before the Court of law. To my mind the charge proved calls for a minor punishment.....It is interesting that Rule 4(2)(d) provides for recovery from pay of the whole or in part of any pecuniary loss caused to Government by negligence or breach of orders. In this case though the Secretary has harped on the theme of pecuniary loss without having any basis for it, the recovery of such loss is consigned as a minor penalty and assuming the Secretary is correct which, however, is not borne by facts still on his own showing it calls for a minor penalty by law

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209. BHIS Apparels Limited vs. Alliance for Bangladesh Workers Safety (22.07.2019 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 7882 of 2017 Hon'ble Judges/Coram: Moyeenul Islam Chowdhury and Md The petitioner is a limited company

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210. BRAC vs. National Board of Revenue and Ors. (12.02.2008 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 6768 of 2001 Appellants: BRAC Vs. Respondent: National Board of Revenue and Ors

CaseNote: Direct Taxation - Waving of tax - Section 158(2) of Income Tax Ordinance, 1984 (Ordinance, 1984) - Appeal against order whereby refused to consider prayer for waiver from payment of requisite tax for want of authority under Section 158(2) of Ordinance, 1984 - Whether or not Board justified in refusing to consider prayer for waiver of petitioner from payment of tax for appeal presented in absence of any such provision in Ordinance empowering it so to do? - Held, reduction of requisite tax, discretion of Board found to be not necessary - As such omitted by Parliament in interest of revenue - Petitioner cannot claim as of right of Board to exercise such discretion after Finance Act, 2000 - And Board cannot be said to acted illegally in refusing to invoke such discretion on application since on date Board ceased to have such discretion - Refusing prayer on ground that at time he had no discretion to exercise and consider such prayer, cannot be said to have affected right of appeal of petitioner - Therefore, cannot be said to be ex facie bad, illegal and/or unauthorised - As such, of no legal effect - Rule discharged with cost. [21],[22],[23]

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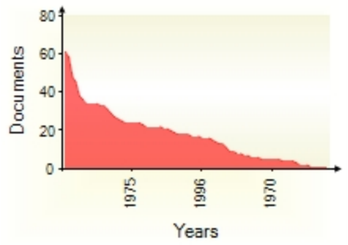

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211. Bachan Singh and Ors. vs. State of Punjab and Ors. (16.08.1982 - SC) Add to session list

US 584; Rex v. Miller and Cockriell 70 **DLR** 324; Tyrer v. United Kingdom 2 EHRRI (1978 US 183; Masalti v. State of U.P. MANU/SC/**0074**/1964; State of U.P. v. Samman Das MANU/SC

CaseNote:

Constitution - death penalty - Section 302 of Indian Penal Code, 1860, Section 353 (4) of Criminal Procedure Code, 1973 and Articles 14 and 21 of Constitution of India - constitutional validity of death penalty under Section 302 read with Section 353 (4) under challenge - majority opinion had earlier held the same to be constitutionally valid - as per minority opinion said provisions were unconstitutional and void as being violative of Articles 14 and 21 - death penalty did not serve any social purpose and was arbitrary and unreasonable - by killing murderer reformative process is bypassed - no additional deterrent effect from life sentence - life sentence is now rule and death sentence in only exceptional cases - Legislature has never indicated those exceptional cases - death penalty barbaric and its effect inhuman - penological goals do not justify imposition death penalty - death penalty strikes mostly against poor and deprived sections of society so discriminatory - Constitution of India places human beings at center of constitutional scheme and focuses on full development of is personality - burden lies on petitioner to prove that statute is arbitrary and discriminatory - in exceptional cases initial burden can be placed on State - burden lies on State to prove reasonableness and fairness of law providing for death penalty - minority judgment held death penalty to be unconstitutional - majority judgment had earlier held the same to be constitutional.

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212. Bachan Singh vs. State of Punjab (09.05.1980 - SC) Add to session list

IN THE SUPREME COURT OF INDIA Criminal Appeal No. 273 of 1979 and Writ Petition Nos Appellants: Bachan Singh Vs. Respondent: State of Punjab for R.2 in WP 179, R.S. Sodhi and

CaseNote: Criminal - Death sentence - Article 19 of Constitution of India - Appellant was sentenced to death for murder of three persons - Appellant challenges constitutional validity of death sentence - Whether death sentence violates Article 19 (1) - Fundamental freedoms guaranteed under Article 19 are not absolute rights - The right to life is not one of the rights mentioned under Article 19 (1) - Held, death sentence do not violates Article 19.

Criminal - Death sentence - Section 354 (3) of Criminal Procedure Code, 1973 - Whether sentencing procedure provided in Section 354 (3) is unconstitutional on ground that it invests Court with unguided and untrammeled discretion and allows death sentence to be arbitrarily imposed on a person found guilty of murder or any other capital offence punishable under IPC with death or in alternative for life - Section 354 (3) mandates the Court convicting a person for an offence punishable with death under extreme cases - Under this Section Court has to record special reasons for awarding death sentence - Parliament under Section 354 (3) had given a broad and clear guideline to the Court in the exercise of its sentencing discretion - The exercise of sentencing discretion cannot be said to be untrammeled and unguided as it is exercised judicially in accordance with well recognized principles crystallized by judicial decisions - Standardization of sentencing process leaves little room for judicial discretion and it tends to sacrifice justice at the alter of blind uniformity - Murder directly threatens and has extreme potentiality to harm or endanger the security of State and society and it provides special reason to justify imposition of death sentence which is constitutionally permissible - Thus sentencing procedure provided in Section 354 (3) cannot be called unconstitutional.

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213. Badiul Alam Majumdar and Ors. vs. Information Commission and Ors. (18.02.2016 - Add to session list

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CaseNote: Since there is no illegality in the impugned judgement and order passed by the High Court Division, therefore, the same does not call for any interference by the Appellate Division.

We have heard the learned Advocates appearing for both the parties, perused the leave petition, impugned judgment and order passed by the High Court Division and all other connected papers on record. In the instant case the petitioner filed Miscellaneous Case No. 154 of 1982 in the Court of learned District Judge, Mymensingh against the judgment-debtor-respondent under Article 27 of President's Order No. 7 of 1973 for realization of Tk. 6,03,407.02 which includes the principal with interest till 31.10.1982. The decree holder-petitioner obtained ex parte order on 03.04.1983. Thereafter on the basis of the said ex parte decree Execution Case No. 1 of 1986 was filed in the Court of the learned District Judge, Mymensingh which was subsequently transferred to the Court of Artha Rin Adalat by an administrative order of the learned District Judge and renumbered as Execution Case No. 80 of 1991. The respondent having come to know about the Execution Case filed a a Transfer Case being Miscellaneous Case No. 74 of 1997 in the Court of the learned District Judge, Mymensingh to bring the said Execution Case before the learned District Judge. The learned District Judge upon hearing both the parties by the order dated 08.04.1999 allowed the Miscellaneous Case No. 74 of 1997 and brought back the Execution Case to his file which was renumbered as Execution Case No. 1 of 1999. While the Execution Case was pending in the Court of learned District Judge, decree holder-petitioner on 03.04.2008 filed an application in the said Execution Case under Order 21, Rule 17 read with Section 151 of the Code of Civil Procedure for amendment of the Execution Petition with a calculation sheet for passing an order of interest till realization of the money. [7]

On perusal of the aforesaid order it appears that the learned District Judge did not pass any order directing the judgment-debtor-defendant-respondent to pay interest from the date of the order till realization. In this context it is pertinent to reproduce section 34 of Code of Civil Procedure, 1908 below:

"34.(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie." [11]

While interpreting section 34 of the Code of Civil Procedure, 1908 this Division in Sonali Bank vs. Mahbubul Amin and Anr. 42 DLR (AD) 107 stated as under: "11. It will be seen that sub-section (1) above speaks of separate interest for three different stages which may be awarded by a Court where and in so far as a decree is for the payment of money. The Court may order interest to be paid on the principal sum adjudged (1) from the date of suit to the date of the decree, in addition to (2) any interest adjudged on such principal sum from any period to the institution of the suit with (3) further interest on the aggregate sum so adjudged from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit. 12. Sub-section (2) clearly refers to the interest mentioned in item (3) above i.e. interest from the date of the decree and says that if a decree is silent with respect to such interest the Court shall be deemed to have refused the same, and a separate suit therefore shall not lie." [12]

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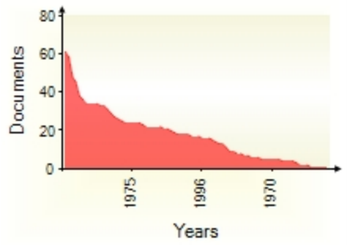

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Administrative Law (46)
Administrative law (1)

Judge
A.B.M. Khairul Haque (23)
A.F.M. Abdur Rahman (13)

Keywords
Absence (510)
Accused (413)

Display in Results : Excerpt CaseNote

231. Bangladesh House Building Finance Corporation vs. Nuruzzaman (28.05.2012 - BDAD) Add to session list

a Transfer Case being Miscellaneous Case No. **74** of 1997 before the Court of the learned decisions reported in LEX/BDHC/0022/1995 : 47 **DLR** 158 and 16 BLD (AD) 231 Artha Rin Adalat

CaseNote: Civil - Money - Suit for realization of - Present petition for leave to appeal is directed against judgment and order in Civil Revision filed in relation to Miscellaneous Case against Respondent for realization of impugned sum of money which includes principal amount as well as interest - Whether order allowing prayer for amendment of application for execution illegal - Held, District Judge did not pass any order directing Judgment-Debtor/Defendant-Respondent to pay interest - Order allowing prayer for amendment of application for execution suffers from error of law - No illegality in impugned judgment and order passed by High Court Division - Petition dismissed. [16], [17]

232. Bangladesh Inland Water Transport Corporation vs. Al-Falah Shipping Lines Ltd and others (08.05.1997 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 23 of 1994 Hon'ble Judges/Coram: A.T.M. Afzal, C.J., Mustafa Kamal, Latifur Rahman and Bimalendu Bikash

CaseNote: Civil - Admiralty Suit - Compensation in - Present appeal by leave is from judgment and decree passed by High Court Division in admiralty suit partly decreeing plaintiff-respondent's suit against all defendants including appellant with costs - Whether on proper consideration of evidence on record, quantum of damages was ascertained properly - Held, defendant was responsible for accident - Vessel of plaintiff is alleged to have sustained total loss - Vessel could not be salvaged - Suit remanded to Admiralty Court only to determine value of vessel and pass decree in favour of plaintiff upon such determination - Appeal disposed of. [13]

233. Bangladesh Inland Water Transport Corporation vs. Al-Falah Shipping Lines Ltd. and Ors. (29.04.1997 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 23 of 1994 Hon'ble Judges/Coram: A.T.M. Afzal, C.J., Mustafa Kamal, Latifur Rahman and Bimalendu Bikash

234. Bangladesh Inland Water Transport Corporation vs. Al-Falah Shipping Lines Ltd. and others (08.05.1997 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 23 of 1994 45 **DLR** 152--This case is not an authority for deciding the Admiralty jurisdiction

CaseNote: Admiralty Court Act, 1840

Section - 6

The High Court of Admiralty exercised jurisdiction over claims for towage on the high seas and not within the body of county and this jurisdiction was extended by section 6 of the Admiralty Court Act. 1840 to claims within the body of a county.

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248. Bangladesh Sangbadpatra Parishad vs. The Government of the People's Republic of Bangladesh and Ors. (30.05.1991 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 383 of 1991 The first Wage Board was constituted on 26.7.**74** which gave an awarded on 26.4.77 but it

249. Bangladesh Shilpa Rin Sangstha vs. Chairman, Second Labour Court and Ors. (08.11.1979 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Hon'ble Judges/Coram: Syed Mohammad Hussain and Further the enquiry continued from 5-9-**74** to 9-9-**74** on consecutive days

250. Bangladesh Shipping Lines Ltd vs. Commissioner Of Customs, Chittagong and others (21.07.2002 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 5243 of 2000 Appellants: Bangladesh Shipping Lines Ltd Vs. Respondent: Commissioner Of Customs

CaseNote: Civil - Amendment of plaint - Appeal against judgment and orderwhereby rejected application for amendment of plaint - Whether lower court rightly rejected application for amendment of plaint? - Held, questions at which parties likely to be at variance are which of handling agents liable to pay as per adjudication order to be passed by defendant No. 1 and for which period of agency -Plaintiff has not denied execution of joint declaration with defendant No. 2 nor he has denied his liability to pay for period - If plaintiff can prove its case, plaintiff would not be held responsible for any period either or after - Relief sought for in plaint is sufficient to address its grievances -Proposed amendment are 4 - First, to add further relief of C-I, that joint declaration to be declared void ab initio and be cancelled - Second, that defendant No. 2 and/or No. 3 to be declared liable and responsible to pay the money to be assessed by defendant No. 1 - Third, relief of C-II, for money decree - Fourth, decree, of mandatory injunction directing defendant Nos. 2 and 3 to pay penalty - If plaintiff succeeds to fix responsibility of defendant No. 2 and/or No. 3 and gets decree accordingly, then, defendant No. 1 would be obliged to return amount realised from plaintiff, and would need no mandate from Court to realise dues from agent found responsible -It is settled law that in suit for decree of declaration amendment for adding further relief of money decree cannot be allowed - Proposed amendment neither just nor necessary for determination of real issues in controversy that may arise in suit between parties -Exercise of discretion by Subordinate Judge in rejecting application for amendment of plaint does not, therefore, suffer from any infirmity or illegality - Rule discharged. [28], [29]

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বিকল্প ▼

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 53 of 2004 Hon'ble Judges/Coram: Surendra Kumar Sinha, C.J., Syed Mahmud Hossain, Hasan Foez Siddique and

CaseNote: Criminal - Arrest and detention - Direction for - Present appeal filed to challenge judgment passed by High Court Division which gave various directions for regulating arrest to be made by police - Whether High Court Division justified by issuing directions and making recommendations impugned in present case - Held, courts in appropriate cases can issue directions, recommendations and guidelines if there is vacuum in law - Constitutional and statutory safeguards of citizens must be protected - Court being guardian of constitution cannot keep blindfolded condition despite rampant violation of fundamental rights - All recommendations made in impugned judgment are not relevant under changed circumstances - Guidelines to be followed by every member of law enforcing agencies in case of arrest and detention of any person out of suspicion - Law enforcement agencies to respect and protect human dignity - Must maintain and uphold human rights of all persons - Law enforcement agencies may use force only when strictly necessary - No law enforcement agencies shall inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment - Law enforcing agencies must also protect rights guaranteed to each citizen by constitution - It is better to prevent crime than to resources into motion after crime has been committed - Member of law enforcement officer making arrest of any person shall prepare memorandum of arrest immediately after arrest - Member of law enforcement officer who arrests any person must intimate to nearest relative of arrestee - Registration of case against arrested person is sine-qua-non for seeking detention of arrestee - Law enforcing officer shall disclose his identity and if demanded, shall show his identity card - Law enforcing officer shall allow person arrested to consult lawyer of his choice - Direction to be enforced with full effect - Appeal dismissed. [221], [222]

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257. Bangladesh and Ors. vs. Dhaka Steel Works Ltd. and Ors. (04.11.1992 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Counsels: For Appellant/Petitioner/Plaintiff: A.W. Bhuiyan, Additional Attorney General instructed by B. Hossain

CaseNote: Property - Abandoned property - Status of - Present appeal filed to challenge judgment and order passed by High Court Division in writ petition wherein taking over of enterprise as abandoned property and Government's refusal to implement its earlier decision or for releasing subject property, were declared invalid - Whether property of Respondent No. 1 is abandoned property - Held, no basis for treating Company as abandoned property - No basis for placing it under Corporation treating it to be abandoned property - Placement under Corporation was illegal - No interference called for - Appeal dismissed. [80]

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258. Bangladesh and Ors. vs. Mahbubuddin Ahmed (04.02.1998 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 95 of 1997 preferred Administrative Appellate Tribunal Appeal No. **74** of 1989 but the same was also

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259. Bangladesh and Ors. vs. Mahbubuddin Ahmed (08.02.1998 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Appeal No. 95 of 1997 preferred Administrative Appellate Tribunal Appeal No. **74** of 1989 but the same was also

CaseNote: Service - Dismissal - Appeal against judgment and order of dismissing Appellant from service - Whether impugned judgment and order suffers any illegality or not - Whether order of suspension passed against Government servant takes effect when it is made or when it is actually served on and received by him? - Held, order of dismissal passed by CMLA - Martial Law Ordinance repealed on 10.11.86 under Proclamation of withdrawal of Martial Law of same date - Respondent not communicated with order of dismissal until 4.1.87 when Notification issued by Ministry of Establishment saying that respondent was dismissed on 8.11.86 - Order to be effective must at least be communicated to person concerned and date of actual receipt is not material for said purpose - No communication of order of dismissal until 4.1.87 - Order was not communicated to respondent when there was light in it respondent was communicated about order at time when no tight could be put in order - Therefore order of dismissal qua respondent was not order under Martial Law Ordinance - Appeal allowed. [31], [32], [33]

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260. Bangladesh and Ors. vs. Mizanur Rahman (30.05.2000 - BDAD) Add to session list

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IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 194 of 1982 Hon'ble Judges/Coram: Quazi Shafi Uddin, J For Respondents/Defendant: JN Dev with Nazrul

CaseNote: Property - Possession - Appeal against judgment and decree reversing those of Subordinate Judge whereby dismissed suit for declaration of JunglebariAbadkari right on reclamation and confirmation of possession therein - Whether court below proceeds in accordance with law or commits errors of law in course of trial occasioning failure of justice or commits error in procedure? - Held, on consideration of rent-receipts and other papers of plaintiffs appellate Court found plaintiffs as tenants under Tea Company - But Judge lost sight of background of case as well as nature of documents of plaintiff produced - Judge lost sight of attending circumstances under which said papers were made public and also cogent reasons given by trial Court -Trial Court disbelieved papers filed by plaintiffs on ground that these papers were collusive - Although plaintiff filed title suit which was dismissed and also filed appeal but these papers were not filed before courts in support of his claim -Non-disclosure is fact to be taken into consideration - Also fact that prosecution witness who used to serve in Baraura Tea Company in collusion with staff might have manufactured these papers could not be brushed aside - Court of appeal below committed serious error of law - Therefore, Rule made absolute -Judgment and decree passed by Additional District Judge hereby set aside - Judgment and decree of Subordinate Judge affirmed and maintained.[36], [37], [38]

Cited in DB

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269. Bangladesh vs. Md. Aslam and others (27.07.1989 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Revision No. 194 of 1982 Hon'ble Judges/Coram: Quazi Shafi Uddin, J Acts/Rules/Orders: Code of Civil Procedure, 1908

CaseNote: Code of Civil Procedure (V of 1908) Section 100

The term "occasioning failure of justice", whether has a far reaching significance - The plaintiff, whether must not make departure from pleading made in the plaint.

Held: (i) The term "occasioning failure of justice" has afar reaching significance. It invests the High Court with wide power not only to go into the question of law but also to the question of fact in search of fact and to make scrutiny and analyze and if necessary, to assess evidence for itself for its own satisfaction. How, to what extent such failure of justice has been perpetrated.

(ii) The plaintiff must not make any departure from the earlier pleadings made in the plaint so as to bring into existence any new claim or raise any new ground or plea which are quite inconsistent, incongruous or a departure from the earlier stand or pleas. The Court will not allow either party from making any departure from the earlier pleadings set forth in the plant or written statements. Plaint and written statement are the foundation of the claim of the plaintiff and the defendant; any deviation from the earlier stand would surely land the other side into serious dislocation and by Order 6, Rule 7 of the Civil Procedure Code, the same has been made prohibited.

Kazi A. Khaleque Vs. Kazi Fazlur Rahman and others, 34 D.L.R. 278; Ajirannessa Vs. Sapar Mia, 30 D.L.R. (SC) 41--Cited

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270. Bangladesh vs. Md. Golam Ambia (Harun) and Ors. (29.07.2008 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT Lutfi Khasru vs. Bangladesh reported in 55 **DLR** (AD) **74** and Nurul Hussain vs. Government of Bangladesh reported in 49 **DLR** (AD) 108

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Act Rule Order
Code of Civil Procedure 1908 (CPC) - Order IX Rule 13 (22)

Subject
Administrative Law (46)
Administrative law (1)

Judge
A.B.M. Khairul Haque (23)
A.F.M. Abdur Rahman (13)

Keywords
Absence (510)
Accused (413)

CaseNote: Civil - Restoration of Citizenship - Legality of Notification - Article 3 of President's Order, 1972 - Whether Notification in question so far as it related to respondent and show cause Notice of Ministry of Home Affairs served on him were without lawful authority? - Held, impugned order refers to conduct and Government's affidavit is mainly based on respondent's political conduct during liberation struggle and after - There is complete unanimity on all hands that political conduct of respondent was wholly irrelevant for deciding question under Article 3 of President's Order - There is no power under Article 3 for denuding a person of his citizenship for offence of collaboration with Pakistan Occupation Army - Indeed there is nothing in President's Order which authorized Government on date of impugned notification to disqualify a citizen on ground of collaboration with Pakistan Occupation Army - If Government never treated respondent as a citizen of Bangladesh, it means that it never had any doubt about his citizenship even though he was a citizen under law and in that case there was no question of giving any decision under Article 3 - Impugned notification, upon Government's own case, therefore, was not one falling under Article 3 - Thus, looking at notification from any point of view, this court is of opinion that it cannot survive test of being intra vires - Court cannot shirk its responsibility from doing justice according to law on an unfounded assumption of alleged national catastrophe - From record it appears that there was no bonafide attempt on part of appellant to issue any show cause notice to respondent when respondent's permanent addresses were known to appellant before issuance of impugned notification - Thus two Judges were correct in holding that principle of natural justice has been violated in this case - Appeal is dismissed accordingly. [79],[82], [83],[84], [85],[187]

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273. Bangladesh vs. Shafiuddin Ahmed and Ors. (25.06.1997 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Civil Petition for Leave to Appeal Nos Appellants: Bangladesh Vs. Respondent: Shafiuddin Ahmed and Ors

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274. Bangladesh, represented by Secretary, Establishment Division and others vs. Mahbubuddin Ahmed (02.02.1998 - BDAD) Add to session list

Engineer Vs. Mohammad Ali and others, 41 **DLR** (AD)64; Jeevaratnam Vs. State of Madras, AIR preferred Administrative Appellate Tribunal Appeal No. **74** of 1989 but the same was also

CaseNote: Constitution of Bangladesh, 1972

Article - 102(2)(a)(ii)

The High Court Division exercising power under Article 102(2)(a)(ii) of the Constitution can only make a declaratory order and nothing more. Unless it is required by law it cannot direct any authority to do a particular thing.

Mujibur Rahman Vs. Bangladesh, 44DLR(AD)111; Abul Bashar Vs. Bangladesh, 1BLC(AD)77; The Collector, Central Excise and Land Custom, PLD 1985(SC)82; Bangladesh Bank Vs. Administrative Appellate Tribunal, 44DLR(AD)239; Asma Jilani Vs. Government of Punjab, PLD1972(SC)139; Constitution in Crisis by John E.Finn; Md. Abdul Baten Vs. The Principal Secretary, Writ Petition No. 1616 of 1990 (Unreported); Khandaker Ehteshamuddin Ahmed alias Iqbal Vs. Bangladesh, 33 DLR(AD)154; Helaluddin Ahmed Vs. Bangladesh, 45DLR(AD)1; State Vs. Zia-ur-Rahman, PLD1973(SC)49; Federation of Pakistan Vs. Saeed Ahmed, PLD 1974(SC)151; Fauji Foundation and another Vs. Shamimur Rahman, PLD1983(SC)457; Pakistan Vs. M/s. A.V. Issacs, 22 DLR (SC)371; I.M. Lall's case PLD1948 (PC)150; Executive Engineer Vs. Mohammad Ali and others, 41 DLR (AD)64; Jeevaratnam Vs. State of Madras, AIR 1966(SC)951; State of Punjab Vs. Khemi Ram, AIR1970 (SC)214--Cited

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275. Bangladesh, represented by the Secretary, Ministary of Establishment vs. Shafiuddin Ahmed and 2 Others (26.06.1997 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Appellants: Shafiuddin Ahmed and 2 Others Vs. Respondent: Bangladesh represented by the Secretary, Ministry of

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276. Bangladesh, represented by the Secretary, Ministry of Industries, Government of the People's Republic of Bangladesh and anr vs. Dhaka Steel Works Ltd and others (12.11.1992 - BDAD) Add to session list

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION Appellants: Bangladesh Steel and Engineering Corporation,

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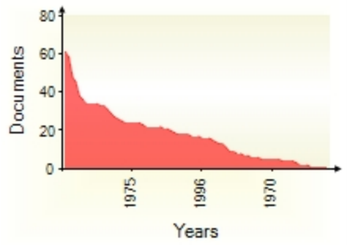

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Subject
Administrative Law (46)
Administrative law (1)

Judge
A.B.M. Khairul Haque (23)
A.F.M. Abdur Rahman (13)

Keywords
Absence (510)
Accused (413)

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281. Begum Khaleda Zia and Ors. vs. The State and Ors. (30.10.2018 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Hon'ble Judges/Coram: M. Enayetur Rahim and Md
Counsels: For Appellant/Petitioner/Plaintiff: Rafiqul Haq, Khandker

CaseNote: Criminal - Corruption - Conviction of - Section 409, 109 of Penal Code, Section 5(2) of Prevention of the Corruption Act, 1947 - Present appeals filed to challenge judgment and order passed by learned Judge convicting and sentencing appellant under Sections 409, 109 of Penal Code, Section 5(2) of PC Act - Whether judgement and order under challenge need interference - Held, corruption includes financial crime - Poses grave danger to concept of good governance - Also threatens very foundation of democracy, social justice and Rule of Law - Duty of court is to work in such manner to strengthen fight against corruption - No scope to take lenient view in awarding punishment to accused against whom charge proved considering his/her social and/or political position - Appeal dismissed.

282. Begum Khaleda Zia vs. Anti Corruption Commission and Ors. (18.06.2015 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Writ Petition No. 4982 of 2008 Counsels: For Appellant/Petitioner/Plaintiff: Khandker Mahbub Hossain, Advocate, A.J.

283. Begum Shirin Akhtar vs. Bangladesh House Building Finance Corporation and Ors. (07.06.2010 - BDHC) Add to session list

did not act as per the decision of 49 **DLR** (AD) 80 and 47 **DLR** 158 thereby causes hindrance in the matter of

284. Bengal Bricks Industries Ltd. vs. Al-haj Md Ishaque Chowdhury and ors. (19.07.2004 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION First Appeal No. 595 of 1999 Hon'ble Judges/Coram: Syed A.B. Mahmudul Huq and Md Acts/Rules/Orders: Contract Act, 1872

CaseNote: Property - Declaration of title - Appeal filed against decree of suit for declaration of title and for confirmation of possession - Whether Respondent was entitled for decree of declaration of title of suit property - Held,Respondent did not produce his agreement - Respondent failed to prove payment of any consideration - Deed obtained by Respondent was clearly hit by doctrine of lispendensas transfer taken place when suit for specific performance of contract was pending - Therefore impugned decree of Trial Court could not be maintained in law - Appeal allowed. [53], [56],[66], [77]

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285. Bengal Water Ways Ltd. vs. Inland Water Transport Authority and others (25.07.1993 - BDHC) Add to session list

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION Civil Revision No. 110 (fm) of 1992 Hon'ble

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